IN THE

# Supreme Court of the United States.

OCTOBER TERM, A. D. 1927.

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No.

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L. P. LARSON, JR. COMPANY,
*Petitioner,*

*vs.*

WM. WRIGLEY, JR. COMPANY,
*Respondent.*

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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## RECORD

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CHARLES H. ALDRICH ESQ.,
GEORGE I. HAIGHT ESQ.,
CHESTER D. KERN ESQ.,
RALPH L. PECK ESQ.,
*Counsel for Petitioner.*

ISAAC H. MAYER ESQ.,
WALLACE R. LANE ESQ.,
*Counsel for Respondent.*

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IN THE

# United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, A. D. 1925.

---

## No. 3727

L. P. LARSON, JR., COMPANY,

*Appellant,*

*vs.*

WM. WRIGLEY, JR., COMPANY,

*Appellee.*

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## No. 3728

WM. WRIGLEY, JR., COMPANY,

*Appellant,*

*vs.*

L. P. LARSON, JR., COMPANY,

*Appellee.*

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1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable James H. Wilkerson, District Judge of the United States for the Northern District of Illinois, on Friday, the twentieth day of March, in the year of our Lord one thousand nine hundred and twenty-five, being one of the days of the regular March Term of said Court, begun Monday, the second day of March, and of our Independence the 150th year.

Present:

Hon. James H. Wilkerson, District Judge.
Palmer E. Anderson, U. S. Marshal.
Charles M. Bates, Clerk.

Filed Oct. 27, 1911.

2 IN THE DISTRICT COURT OF THE UNITED STATES.

Northern District of Illinois.

Eastern Division.

Wm. Wrigley Jr. Co., a corp. organized under the laws of the State of West Virginia,
*vs.*
L. P. Larson Jr. Co. a corp. organized under the laws of the State of Illinois.
} No. 30,563.

Be It Remembered, that the above-entitled action was commenced by the filing of the following Bill of Complaint in the above-entitled cause, in the office of the Clerk of the District Court of the United States, for the Northern District of Illinois, Eastern Division, on this the 27th day of October, 1911.

3 • • • No. 30,563 • • •

BILL OF COMPLAINT.

To the Honorable the Judges of the Circuit Court of the United States, in and for the Northern District of Illinois, Eastern Division, in Chancery Sitting:

Wm. Wrigley Jr. Company, a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and a citizen of the State of West Virginia, complainant, brings this its Bill of Complaint against L. P. Larson Jr. Co., a corporation organized under the laws of the State of Illinois and a citizen of said State, and doing business in the City of Chicago, and L. P. Larson, Jr., a resident of the City of Chicago, and a citizen of the State of Illinois, and doing business in the City of Chicago, in said State;

4 Whereupon your orator complains and says:

I.

That prior to the year 1894 Wm. Wrigley, Jr. and William Scatchard were copartners in business and engaged in the

manufacture, production, marketing and sale of a wide variety of chewing-gum products of every kind, nature and description known to that business industry, and in vending the same in large quantities throughout all the United States and territories thereof, and in adjacent foreign countries, and had a business of great extent; said copartnership and business of the said Wm. Wrigley, Jr. and William Scatchard was conducted under the name of Wm. Wrigley, Jr. & Co., and continued, from the inception of said business in the year 1892 until the year 1903, as a copartnership. That during the year 1903 the said copartnership was dissolved, whereupon your orator's predecessor was duly incorporated and became a body corporate by virtue of the laws of the State of Illinois, under the name of Wm. Wrigley Jr. & Co., and succeeded to the business, good-will, trade-marks, tradenames and other assets of said copartnership, the same, all and singular, having been fully conveyed, transferred and assigned by the said copartners to the said corporation Wm. Wrigley, Jr. & Co.

II.

That on or about the 1st day of January, 1911, your orator, Wm. Wrigley Jr. Company, purchased the entire property and assets of Wm. Wrigley Jr. & Co., an Illinois corporation, together with the trade-marks, tradenames, trade-dress, good-will and trade rights in and relating to the business of your orator's predecessor, and that the business of your orator's predecessor acquired as aforesaid, and by it now carried on, consists of the manufacture, production and sale of chewing-gum products, including a product known as "Spearmint Gum" and all the trade-marks, tradenames and trade-dress and good-will relating thereto.

III.

That about the year 1894 your orator's predecessor in business adopted and used as a distinguishing name and to denote and identify one of its said products, the name "Spearmint", which name was not at that time in use in connection with chewing-gum products and which never had been used, as your orator is informed and believes, in connection with its said products.

And your orator further says that a radically new form of trade-dress was adopted for its Spearmint product, both as

to markings and color, the predominating colors being red, white and green for the outside wrapper, while five individual sticks of gum were separately wrapped in pink wrappers; the outside wrapper being shorter that the individual sticks of gum, so as to leave the pink ends of the individual sticks projecting beyond the ends of the outside wrapper, and that a carton for containing the individual packages as originally adopted and used continuously since the year 1894 has had particular and peculiar markings thereon, the predominating colors being red, green, white and yellow.

IV.

That the defendant L. P. Larson, Jr. Co. is a corporation organized under the laws of the State of Illinois, having an office and conducting its business in the City of Chicago, County of Cook, in said State, and in the Northern District and Eastern Division thereof, and is a resident and citizen of said Northern District, Eastern Division of Illinois; that the individual defendant, L. P. Larson, Jr. is, as your orator is informed and believes, President of the said corporation and personally conducts and controls its business affairs, and particularly in the City of Chicago in said Northern District of Illinois, Eastern Division; that said corporation and individual defendant are engaged in the manufacture and sale of a chewing-gum product under the tradename of "Peptomint", and that said defendants, corporation and individual, have conspired together to market and sell a product having a flagrant and fraudulent imitation of your orator's trade-dress, both as to the wrapper appellations and cartons, as aforesaid, for the purpose of injuring your orator's business to their own advantage and profit and to the great damage and detriment of your orator as hereinafter more fully set forth.

V.

That the manufacture and sale of different kinds and styles of chewing-gum products is the only item and branch of industry of your orator and that such chewing-gum products are presented and sold largely by your orator to the purchasing retail stores handling such products, in cartons, boxes and packages of different sizes and shapes, varying according to the different styles of chewing-gum to be enclosed therein, and that all of said packages of your orator

containing chewing-gum products are encased or enclosed by a wrapper formation, having upon the separate wrappers particular and peculiar markings as to color, design and wording, giving a distinctive and attractive appearance to your orator's products as to such wrapper appellations thereon.

VI.

That your orator's predecessor, in the year 1894, having adopted this peculiar and distinctive color scheme and design for the wrappers and cartons to contain its Spearmint product, has continuously used the same color scheme, design, or trade-dress for distinguishing its product from the goods of other manufacturers and such color scheme, design and trade-dress has not alone been contained upon the wrappers and cartons for containing your orator's product, but has been used in all manner and forms of advertising, such as display cards in street cars, bill-boards, electric signs, magazines, trade journals and newspapers throughout the United States, in Canada and in other foreign countries; and in your
8 orator has expended vast sums of money in advertising its Spearmint product and making the same known to the trade and to the purchasing public, and particular emphasis in all of the various forms of your orator's advertising has been laid upon the peculiar and particular markings, color scheme and wrapper formation of your orator's said Spearmint product and in doing so, your orator has spent upwards of three millions of dollars, until the purchasing public throughout the United States has become so familiar with your orator's color scheme, wrapper formation, particular and peculiar markings and the trade-dress as a whole, for its Spearmint product that they look solely to the trade-dress as the sign and symbol of your orator's chewing-gum product, and the presence of such trade-dress as the predominating feature upon the wrapper or carton containing a chewing-gum product, is taken by the purchasing public to mean and mean only that such wrapper or carton containing chewing-gum products, is the wrapper, carton and contents and is the product of your orator.

Your orator hereby makes an Exhibit in this case of its carton for containing its Spearmint product, together with twenty packages containing five sticks each of said product with wrapper appellations thereon, illustrating and identifying the carton and wrapper, trade-dress and manner of pack-

ing of your orator's product continuously followed since its original adoption in 1894, identifying said Exhibit with this your orator's Bill of Complaint as a part thereof and marked "Complainant's Exhibit Complainant's Package".

9 VII.

That the defendant corporation, L. P. Larson Jr. Co., is of recent origin, but that the individual defendant, L. P. Larson, Jr., has been manufacturing and selling chewing-gum for sometime past in the City of Chicago, State of Illinois, your orator not being informed exactly as to the length of time that said individual defendant has conducted his business for the sale of chewing-gum products, said business being conducted under that name of Zulu Manufacturing Company, having an office in the City of Chicago, and of which company the said L. P. Larson, Jr. is President, as your orator is informed and believes.

VIII.

That the said defendants first began the sale of Peptomint Chewing-gum about October 1st, 1911, prior to which time the said defendants' corporation or individual, had never marketed or sold chewing-gum in cartons and wrappers in the trade-dress of Peptomint Gum herein in evidence, and that said defendants have simulated the style of lettering, shape of package, peculiar markings, form of wrapping and general color scheme, thereby producing and giving to their style of package, cartons and wrappers the peculiar visual appearance that was adopted by your orator and your orator's predecessors in the year 1894, and through long years of usage has become the predominating means for designating your orator's well-known Spearmint gum product; your orator further averring upon information and belief that a certain
10 number of dealers in chewing-gum, both the wholesale jobber and the retail dealer, can be found who have purchased the said packages of chewing-gum known as "Peptomint" from the defendant, for the purpose of palming off the defendant's goods upon the public as the goods of your orator and that these defendants have found, as a matter of fact, that the purchasing public makes no distinguishment between the two packages and that the Peptomint Gum product of these defendants can be palmed off on the public and trade generally as the goods and packages of your orator.

IX.

That your orator avers, upon information and belief, that the said defendants are preparing to rush and flood the trade with vast quantities of chewing-gum having the exact trade-dress of your orator, and that unless this Honorable Court shall grant an immediate injunction or restraining order preventing the sale or delivery of said packages, that said defendants will at once utilize such delay and put upon the market its fraudulent imitation of your orator's trade-dress, as above set forth, to the great and irreparable damage of your orator, averring that said chewing-gum product known as "Peptomint" and as made by the defendants, is of an inferior grade or quality to the product of your orator, is not of the same flavor as your orator's product, and is calculated and intended to and does, as a matter of fact, greatly injuring the high
11 reputation, character and quality of your orator's goods;

That this Honorable Court may be more particularly advised as to the trade property of your orator appropriated by these defendants, your orator, therefore, points out in detail the property as appropriated by the defendants:

(1) Your orator avers that the said defendants copied, took and appropriated to their own use a certain carton or box substantially like the carton or box used by your orator, having adopted the same color scheme, markings, form of lettering and the general trade-dress of your orator's carton.

(2) That said defendants took in connection with its carton the individual wrappers for enclosing a single stick of gum, appropriating substantially the same color, namely, pink, having a black bar upon one of its side surfaces with the word "Peptomint" thereon, resembling the well-known spear upon your orator's wrappers and upon the rear or opposite side of said individual wrapper the said defendants have appropriated substantially the same wording, thereby giving to defendants' individual wrappers the general appearance of the wrappers of your orator as evidenced by a comparison of both wrappers.

(3) Your orator avers that said defendants copied and took the outside white wrapper of your orator, both as to color scheme, general making, form of lettering and manner of wrapping, thereby giving to a single package containing
12 five sticks of gum of the defendant's product, the same visual appearance as your orator's product.

(4) Your orator further avers that both the cartons, the

individual wrappers and the outside wrappers and manner of packing of the defendants' product, has the same general appearance as the cartons, individual wrappers, outside wrappers and general appearance as your orator's product; a carton containing twenty packages of the defendants' Peptomint Gum being herein offered in evidence and marked "Complainant's Exhibit Defendants' Product".

X.

That your orator, upon information and belief, avers that the said defendants have heretofore in many ways, directly and indirectly, offered and sold said product, "Peptomint" as and for your orator's product, whereby the public has been misled and injured, and profits which have rightfully belonged to your orator diverted to the defendants, your orator further averring that the value of your orator's said tradedress exceeds in amount more than four millions of dollars, and your orator avers that the amount in dispute as to these defendants as herein set forth, exceeds, exclusive of interest and costs, the sum of to wit, One Hundred Thousand Dollars ($100,000).

That these defendants have in many ways, as your orator is informed and believes and charges the fact to be, offered and sold their said Peptomint product without explanation, said defendants knowing and believing that the same would be accepted by the public as being your orator's product, favorably known as "Spearmint Gum," to the great
13 loss and injury of your orator actually sustained.

That the said defendant by fraudulent and misleading representations and by many dealers handling the product of the said defendants, and by circulars, letterheads, advertisements and otherwise, have endeavored to induce the belief that the Peptomint Gum as manufactured by the defendants is the well-known article or product in demand in the market and manufactured and sold for many years by your orator and its predecessors as aforesaid.

XI.

That the acts of these defendants as above set forth are wholly without your orator's consent and in wrongful violation of your orator's rights as aforesaid, and your orator avers and charges the fact to be that the said acts have been

committed by the said defendants fraudulently, wilfully and unlawfully and that said defendants exercise great skill in closely copying the wrapper appellations, advertisements, letterheads and cartons pertaining to your orator's Spearmint product, as to show by a comparison the spurious and fraudulent imitation of your orator's "Spearmint" product and all things pertaining thereto, even as to detail in the subject-matter, or context, of the advertisements of your orator's product.

## XII.

That the acts of the said defendants, as above set
14 forth are contrary to equity and good conscience and constitute a fraudulent invasion and infringement of your orator's rights in the premises and an unlawful invasion and infringement of your orator's trade rights and trade-dress thereunder, as above set forth, and also your orator's equitable rights in any use of such packages, cartons, wrappers, marks or wording accompanying your orator's product as herein set forth existing in equity and good law, which in this Honorable Court will be protected and perserved; your orator averring that the acts of these defendants herein complained of have the effect and result of enabling and permitting false and fraudulent competition in business and fraudulent and unlawful sale and substitution by unscrupulous persons of the defendants' goods in lieu of your orator's goods with the accompanying trade-dress as herein set forth. And your orator prays that it may have the relief in the premises to which, in equity and good conscience, it is entitled, as the same shall appear upon the facts to be just and equitable, and that it may have such relief the same as if it were here and now made the subject of a specific prayer.

To the end, therefore, that your orator may obtain relief in the premises in this Honorable Court, where alone it can obtain relief, it humbly prays:

1. That the said defendants, L. P. Larson Jr. Co. and L. P. Larson, Jr., be made defendants to this Bill and com-
pelled to answer the same, and each and every allegation
15 herein contained, but not under oath (answer under oath being hereby expressely waived, as fully as if directly interrogated as to each:

2. That the said defendants may be compelled to render before one of the masters in chancery of this Court full, true,

perfect and complete account of all profits of every description diverted from your orator, or received by said defendants, arising out of the defendants' commitment of the infringing acts above complained of and to account for and pay over all damages to your orator suffered by your orator by reason of such infringing and unlawful acts;

3. That the defendants L. P. Larson Jr. Co. and L. P. Larson, Jr. and each of them, and their representatives, servants, agents, attorneys and employees, and each of them, be restrained and in due order of time perpetually enjoined from further imitation or simulation of the said cartons, packages or wrappers for chewing-gum of the complainant, as to size, form and color in collocation with symbols and arrangement of printed matter employed by the complainant upon its said cartons, packages and wrappers, and from imitating or simulating the said cartons, packages or wrappers of the complainant in any manner calculated to induce the public to believe that the Peptomint Gum, or other chewing-gum or product of the defendants and each of them, is the complainant's product.

To the end that equity may be done and the relief
16 herein prayed for, and all other that it may be righteous in the premises to administer, may be afforded your orator, may it please your Honors such relief fully to grant, and to award against the defendants, L. P. Larson, Jr. Co. and L. P. Larson, Jr., a writ of subpoena of the United States Circuit Court, for the Northern District of Illinois, Eastern Division, commanding them on a certain day, hereinafter to be named, and under a certain penalty, to be and appear in this Honorable Court then and there to answer all and singular the premises and to stand by and perform and abide by such above or other order, direction and decree as may be made against them.

Your orator ever prays, etc.

WM. WRIGLEY JR. COMPANY,
By WM. WRIGLEY,
*President.*

OFFIELD, TOWLE, GRAVES & OFFIELD,
*Solicitors for Complainant.*
JAMES R. OFFIELD,
*Of Counsel for Complainant.*

State of Illinois, } ss.
County of Cook. }

WM. WRIGLEY, JR., being first duly sworn, says that he is president of the above named corporation, complainant, and is familiar with its business affairs; that he has read the said bill and knows the contents thereof, and is familiar with the exhibits therein referred to, and with the facts recited in said bill; that as to matters and things stated to be true the same are true in all respects and particulars, and as to the matters and things therein states to be true upon information and
17 belief, that he verily believes the same to be true in all respects and particulars.

WM. WRIGLEY.

Subscribed and sworn to before me this 26th day of October, 1911.

EDWARD W. EIKERLY,
(Seal) *Notary Public.*

Filed October 27, 1911.

(Endorsed) Filed Oct. 27, 1911. John H. R. Jamar, Clerk.

1931 The following is a photograph in colors showing the cover and sides of complainant's Exhibit Complainant's Product, which was attached to the Bill of Complaint in No. 30563.

THE FLAVOR LASTS

WRIGLEY'S SPEARMINT

Wm Wrigley Jr. Co. CHICAGO, U.S.A.

# WRIGLEY'S SPEARMINT PEPSIN GUM

TRADE MARK REGISTERED

## The flavor lasts




ROLL IT UNDER YOUR TONGUE
TASTE THE REAL MINT LEAF FLAVOR

FLAVORED WITH THE JUICE OF THE PRESSED MINT LEAVES

GUARANTEED BY WM. WRIGLEY JR. CO.
UNDER THE FOOD AND DRUGS ACT.
JUNE 30, 1906. SERIAL NO. 4840.

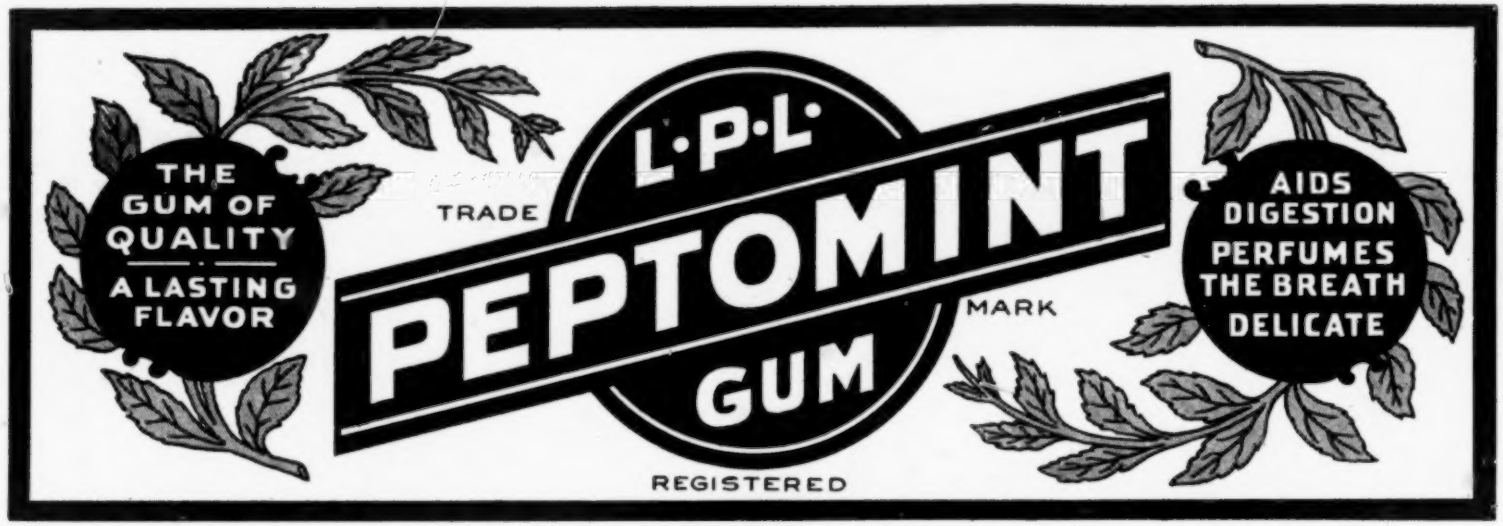
Wm Wrigley Jr. Co.
CHICAGO, U. S. A.

20 PACKAGES WRIGLEY'S SPEARMINT PEPSIN GUM

WRIGLEY'S SPEARMINT PEPSIN GUM

1929 The following are photographic copies in colors of the five stick gum package contained in the box marked complainant's Exhibit Complainant's Product and of the Counterband around said five stick package.

1927 The following is a photograph in colors showing the cover and sides of Complainant's Exhibit Defendant's Product, which was attached to the Bill of Complaint in No. 30563.



AIDS DIGESTION

BEST BY TEST

And on to wit: the 27th day of October, A. D. 1911, there was filed in the Clerk's office of said court a certain Affidavit, in words and figures following to wit: Filed Oct. 27, 1911.

18 * * * * * *

AFFIDAVIT.

State of Illinois }
County of Cook } ss.

FRANK E. TUTTLE being first duly sworn, deposes and says that he is 17 years old; that on Friday, October 20th, 1911, he called at the factory of L. P. Larson Jr. Company where Peptomint Gum is made; that said place where Peptomint Gum is made, is known as and there is a sign of Zulu Manufacturing Company, located at 29 S. Clinton Street in the City of Chicago, on the third floor in the rear; that deponent purchased a box of Peptomint Gum for fifty cents and asked for a receipt for said purchase which the said clerk refused to give. The box of gum so purchased by deponent is herewith attached to this affidavit and marked by deponent with deponent's name and date on the bottom thereof as follows:

19 "Frank Tuttle, October 20, 1911."

And further deponent sayeth not.

FRANK E. TUTTLE.

Subscribed and sworn to before me this 27th day of October, 1911.

EDMUND G. INGERSOLL,
(Seal) *Notary Public.*

(Endorsed) Filed October 27, 1911. John H. R. Jamar, Clerk.

20 And on to wit: the 27th day of October, A. D. 1911, there was filed in the Clerk's office of said court a certain Affidavit, in words and figures following to wit:

1925 The following are photographic copies in colors of the five stick gum package contained in the box marked Complainant's Exhibit Defendant's Product and of the Counterband around said five stick package.

21 * * * No. 30,563 * * *

AFFIDAVIT.

Filed Oct. 27, 1911.

State of Illinois } ss.
County of Cook }

J. C. COX being first duly sworn, deposes and says that he is the legal age and is employed by Wm. Wrigley Jr. Company; that he has investigated the L. P. Larson Jr. Company and all available reports show the following facts:

That L. P. Larson Jr. Company was incorporated under the laws of Illinois about the 1st of August, 1911; with an authorized capital stock of $2500.; that the company is engaged in the manufacture of Peptomint Chewing gum which they sell in packages and also in vending machines manufactured by the Zulu Manufacturing Company; that the officers of the L. P. Larson Jr. Company are the same officers as the Zulu Manufacturing Company; that the office and factory of both companies are at the same place; that deponent has known of the Zulu Manufacturing Company for a consid-
22 erable period of time and that to his knowledge the Zulu Manufacturing Company has only produced one style of chewing-gum, namely, that adopted for slot machines and known to the trade as Zulu Gum, a package of which is hereto attached and forms a part of this affidavit being marked for identification as "Zulu Gum."

And further deponent sayeth not.

J. C. Cox.

Subscribed and sworn to before me this 26th day of October, 1911.

EDWARD W. ECKERLY,
*Notary Public.*

(Seal)

Zulu Gum Wrapper not copied.

(Endorsed) Filed Oct. 27, 1911. John H. R. Jamar, Clerk.

23 And on to wit: the 27th day of October, A. D. 1911, there was filed in the clerk's office of said court a certain Affidavit in words and figures following to-wit:

24 • • • No. 30,563 • • •

Filed Oct. 27, 1911.

## AFFIDAVIT.

State of Illinois } ss.
County of Cook }

GERALD HAYES being first duly sworn, deposes and says that he is Fifteen years of age; that on Monday October 23rd, 1911, he called at the Union Loop station of the Elevated Railroad at Adams and Wabash Avenue on the Northwestern side; that he asked the clerk in charge of the stand for two packages of Spearmint Gum and the clerk thereupon handed him two packages of Peptomint Gum for which he paid ten cent. The packages so purchased are hereto attached and marked for identification: "Gerald Hayes, 10/23/11, Adams & Wabash Ave."

Deponent further states that on October 21st, 1911, he went to the elevated station at Madison Street and Wabash
25 Avenue known as the Metropolitan side of the Union Loop and asked the clerk in charge of the stand for a package of Spearmint Gum; that the clerk thereupon handed him a package of Peptomint Gum for which he paid five cents, said package of gum being herewith attached to this affidavit and marked for identification: "Madison and Wabash, Metro. side, Gerald Hayes, 10/21/11".

Deponent further states that on October 23rd, 1911, he went to the Union Loop station of the Elevated Railroad at Madison and Wabash Avenue on the Metropolitan side and asked the clerk in charge of the stand for two packages of Spearmint Gum; that the clerk thereupon handed him two packages of Peptomint Gum for which he paid ten cents, said packages being herewith attached to this affidavit and marked for identification: "Gerald Hayes 10/23/11, Madison and Wabash Avenue".

Deponent further states that on October 23rd, 1911, he called at the Independent Drug Company located in the Republic Building corner State and Adams Street, Chicago, and asked the Clerk for three packages of Spearmint Gum; that the clerk in said store sold him three packages of Peptomint Gum for fifteen cents, one of said packages being herewith attached to this affidavit and marked for identification: "Gerald Hayes, 10/23/11, Independent Drug Co."

GERALD HAYES

Subscribed and sworn to before me this 24th day of October, 1911.

EDMUND G. INGERSOLL
*Notary Public.*

(Seal)

Endorsed: Filed Oct. 2, 1911. John H. R. Jamar, Clerk.

26 And on to-wit: the 27th day of October, A. D. 1911, there was filed in the Clerk's office of said court a certain Affidavit, in words and figures following to-wit: Filed Oct. 27, 1911.

27 • • • No. 30,563 • • •

AFFIDAVIT.

State of Illinois } ss.
County of Cook }

J. A. WILLIAMS being first duly sworn, deposes and says that on Monday, October 23rd, 1911, he went to the Union Loop station of the Elevated Railroad at Adams and Wabash Avenue on the Northwestern Elevated side and asked the clerk in charge of the stand there for a package of Spearmint Gum; that the clerk thereupon handed him a package of Peptomint Gum for which he paid five cents, and has marked said package for identification as follows: "N. W. side Adams & Wabash, J. A. Williams, Oct. 23", the said package being herewith attached to this affidavit.

Deponent further states that on Monday, October 23rd he also called at the Union Loop station of the Elevated Railroad at Madison & Wabash Avenue, on the Metropolitan side and asked the clerk for a package of Spearmint Gum;
29 that the clerk thereupon handed him a package of Peptomint Gum for which he paid five cents and has marked the same for identification as follows: "Metro. side Madison & Wabash, J. W. Williams, Oct. 23"; the package of gum so purchased being herewith attached to this affidavit.

Deponent further states that he is of legal age.

J. A. WILLIAMS

Sworn to and subscribed before me this 27th day of October, 1911.

EDMUND G. INGERSOLL
*Notary Public.*

(Seal)

(Endorsed) Filed Oct. 27, 1911, John H. R. Jamar, Clerk.

28 • • • • • • •

AFFIDAVIT.

State of Illinois } ss.
County of Cook }

J. A. WILLIAMS being first duly sworn, deposes and says that on Tuesday, October 24, 1911, he called at the Independent Drug Company in the Republic Building Chicago, and asked a clerk for a package of "Spearmint Gum"; that said clerk thereupon handed him a package of Peptomint Gum for which he paid five cents, the said package being marked for identification as follows:

"J. A. Williams, 10/24/11, Independent Drug Co."

And further said deponent sayeth not.

J. A. WILLIAMS.

Subscribed and sworn to before me this 27th day of October, 1911.

EDMUND G. INGERSOLL
(Seal) *Notary Public.*

Endorsed: Filed Oct. 27, A. D. 1911.

Entered Oct. 27, 1911.

30 And afterwards on, to wit, the 27th day of October, 1911, this matter coming on to be heard, the following order was entered by the Court:

31 • • • No. 30,563 • • •

Friday, Oct. 27, 1911.

Carpenter, J.

RULE TO SHOW CAUSE WHY AN INJUNCTION PENDENTE LITE SHALL NOT BE ISSUED AGAINST DEFENDANTS.

---

Upon filing of the Bill of Complaint herein and the accompanying affidavits of Gerald Hayes, Frank E. Tuttle, J. A. Williams, J. C. Cox and James R. Offield, and the Exhibits therein referred to.

It Is Ordered that the defendants, or their counsel show

cause before Judge Kohlsaat at a session of this Court to be held in the court room thereof, in the Federal Building in the City of Chicago, Northern District of Illinois, Eastern Division, on the 8th day of November, 1911, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, why an injunction pendente lite shall not be issued against the said defendants in accordance with the prayer of the Bill.

32 It Is Further Ordered that the defendants, or their counsel serve copies of any papers that they may have to submit upon the return of this Order to show cause, upon complainant's solicitors on or before the 4th day of November, 1911; that at 12 o'clock noon the complainant or its counsel serve upon the defendants, or their counsel, copies of any papers they may have to submit in reply to any papers served by the defendants, or their solicitors on or before the 7th day of November, 1911; and that a copy of this Order and accompanying affidavits be served upon the defendants on or before the 31st day of October, 1911.

Dated at Chicago, Illinois, October 27th, 1911.

Enter

CARPENTER
*Dist Judge.*

33 And on to-wit: the 27th day of October A. D. 1911, there was filed in the Clerk's office of said court a certain Affidavit, together with Decree thereto attached, in words and figures following, to-wit: Filed Oct. 27, 1911.

34 * * * No. 30,563 * * *

AFFIDAVIT.

State of Illinois }
County of Cook } ss.

JAMES R. OFFIELD being first duly sworn, deposes and says that the sections of letterheads hereto attached to this affidavit, marked "Wrigley Letterhead" and "Larson Letterhead" are the original letterheads of the respective companies taken from stationery in deponent's possession.

Deponent further says that on reference to the 1919 City directory, published by the Chicago Directory Company, L. P. Larson, Jr. is given as President of Zulu Manufacturing Company.

Deponent further says that on inquiry from the Secretary of State for the State of Illinois, L. P. Larson, Jr. is given as a member of the Board of Directors of L. P. Larson, Jr. Company, incorporated on the 28th day of July, 1911; a
35 copy of the letter of the Secretary of State received by deponent being hereto attached.

And further said deponent sayeth not.

JAMES R. OFFIELD

Subscribed and sworn to before me this 27 day of October, 11.

J. M. LUTZ
(Seal) *Notary Public.*

36 Copy

SECRETARY OF STATE
State of Illinois
Springfield.

October 20, 1911.

Offield, Towle, Graves and Offield,
Monadnock Building
Chicago, Illinois.

Gentlemen:

Replying to your favor of the 19th instant, permit me to state,

L. P. Larson, Jr., Company,

was incorporated under the laws of this State, July 28, 1911; the members of the first Board of Directors being, L. P. Larson, Jr., George I. Haight, and Thomas B. Brown.

Owing to the date of its incorporation, I am unable to give you the names of its officers, as the corporation will not be required to make a report of this character until February next.

Very truly yours,
(Signed) JAMES A. ROSE
*Secretary of State.*

HW

37 L. P. Larson, Jr. Company
Peptomint
Chewing Gum Label not copied.
Oct. 17, 1911.

38 Wm. Wrigley Jr. Company
Spearmint Pepsin Gum Label not copied
W. W. Jr. A. S. 10/18/11

39 * * * No. 30,563 * * *

## AFFIDAVIT.

State of Illinois } ss.
County of Cook }

JAMES R. OFFIELD being first duly sworn, deposes and says that he is one of the members of the firm of Offield, Towle, Graves & Offield, solicitors for Wm. Wrigley, Jr. & Company, an Illinois corporation, and that he prepared the record and argued the case of *Wm. Wrigley, Jr. & Company* v. *The Grove Company, et al.*, in the Circuit Court of the United States for the Southern District of New York and that he argued said case in both the Circuit Court and Court of Appeals; that between pages 20 and 21 of the Joint Record herewith accompanying this affidavit and marked "Exhibit A" there appears a yellow wrapper, which was the form of wrapper used by the defendant The Grove Company in said case and the one complained of by Wm. Wrigley Jr. & Company;

40 that on page 21 there appears two pink wrappers for individual sticks of gum designated as "Defendant's Exhibit B", and two outside wrappers designated as "Defendant's Exhibit C"; that these wrappers and the outside carton wrapper were the wrappers used by the defendant, The Grove Company, and the ones complained of in the Bill; that a Final Decree was entered by his Honor Judge Hough on the 8th day of August, 1910, a printed copy of said Final Decree being attached to this affidavit and marked "Offield Exhibit A"; that the defendant thereupon appealed from the decision of His Honor Judge Hough upon the record hereto attached to this affidavit and marked "Offield Exhibit B"; that upon full hearing in the Court of Appeals a decision was rendered in favor of the complainant and a copy of the Final Decree entered on the 20th day of December, 1910, is hereto attached and designated as "Offield Exhibit C".

Deponent further states that the copies of the Final Decree in the Circuit Court and in the Court of Appeals are true and correct and that the Joint Record herein referred to is the same in every respect as the Record filed in the Court of Appeals and upon which the case was heard.

And further deponent sayeth not.

JAMES R. OFFIELD

Subscribed and sworn to before me this 27 day of October, 1911.

J. M. LUTZ
*Notary Public*

(Seal)

41 • • • • • •

## DECREE.

This cause coming on to be heard for final decree upon the mandate returned and the accompanying Opinion of the Court of Appeals returning the same, modifying the decree entered herein on the 8th day of August, 1910, and on consideration thereof, it is now ordered, adjudged and decreed that said decree be and the same hereby is modified so as to read as follows:

Ordered, Adjudged and Decreed:

First: That the defendants have infringed upon and violated the rights of the complainant by imitating and simulating the packages and cartons for Spearmint chewing gum of the said complainant as to size, form and color in collocation with symbols and arrangement of printed matter employed by complainant upon its packages and cartons.

Second: That the packages of complainant consisting of five sticks of gum individually wrapped with an enclosing wrapper, and the printed matter thereon, and the component parts thereof in the collocation and arrangement shown
42 by "Complainant's Exhibit Spearmint Gum", "Complainant's Exhibit Complainant's Label" and "Complainant's Exhibit Complainant's Jar Spearmint Gum", are the equitable property, wrapper, carton and label arrangement of the complainant herein in connection with the manufacture and sale of chewing gum.

Third: That the said Defendants, The Grove Company, Samuel Grove, Jr., Charles E. Blauvelt and Simon Schiener and each of them, and their representatives, agents, servants, attorneys, and employees and each of them be and are perpetually enjoined from further imitation or simulation of the said packages or cartons for chewing gum of the complainant as to size, form and color in collocation with symbols and arrangement of printed matter employed by complainant upon its said packages and cartons and from imitating or simulating the said packages and cartons of the complainant in any manner calculated to induce the public to believe the

"Spearmint Gum" or other chewing gum or product of the defendants is the complainant's product.

Fourth: That the said complainant has a right to recover any and all profits accruing to the said defendants, or each of them, from the aforesaid unlawful violation and infringement of said complainant's rights and to recover the damages suffered by and accruing to said complainant by reason of the commitment of the said unlawful and infringing acts, and that the same be referred to Wm. B. Whitney, who being a suitable person as Master of this Court, and approved by the parties, to take, state and report an account of said
43 damages and profits under and in accordance with this decree, and that upon such accounting the testimony heretofore taken by either party in this case may be read by either party and referred to and considered by said Master.

E. H. LACOMBE

The form of the foregoing decree is not objected to and notice of settlement is hereby waived.

LOUIS HICKS
*Counsel for Defendants.*

JAMES R. OFFIELD
*Counsel for Complainant.*

Endorsed: Filed Dec. 20, 1910. J. A. Shields, Clerk.
Copy

Endorsed: Filed Oct. 27th, 1911. John H. R. Jamar, Clerk.

44 And on to-wit: the 6th day of November, A. D. 1911, there was filed in the Clerk's office of said court a certain Answer, in words and figures following to-wit: Filed Nov. 6, 1911.

45 • • • • • •

THE JOINT AND SEVERAL ANSWERS OF L. P. LARSON, JR. COMPANY, (A CORPORATION), AND L. P. LARSON, JR., DEFENDANTS, TO THE BILL OF COMPLAINT OF WM. WRIGLEY, JR. COMPANY, (A CORPORATION), COMPLAINANT.

These defendants reserving to themselves all right of exception to the said bill of complaint for answer thereto say:

—I—

Answering Paragraph I of complainant's bill of complaint these defendants have no information concerning the matters and things alleged in said paragraph, except as the same are alleged in said bill of complaint, and therefore require strict proof thereof.

46 II.

These defendants answering Paragraph II of complainant's bill of complaint say that they are not advised as to the matters and things therein contained, except as the same appear from the complainant's bill of complaint herein, and therefore ask strict proof thereof.

III.

Answering Paragraph III of the complainant's bill of complaint these defendants say that they are not advised as to the date when the name "Spearmint" was first used by the complainant herein, or its predecessor, but deny that the complainant has any right whatsoever to the exclusive use of the name "Spearmint" in connection with chewing gum products, or in any other connection.

Further answering these defendants deny that the complainant or its predecessor adopted a radically new form of trade dress as to markings and color, and in reference to the allegations in Paragraph III of complainant's bill of complaint states that it has long been the custom and practice in the chewing gum trade in the United States, and was the practice long prior to the year 1892 to wrap five individual sticks of gum in separate wrappers, and that pink wrappers of various shades and tints were used for individual wrappers long prior to the year 1892, and have been commonly used for more than twenty years last past and prior thereto by manufacturers and dealers in gum throughout the United States; that the practice has similarly long obtained of using an outside wrapper shorter than the individual sticks of gum so as to leave the ends of the individual sticks projecting
47 beyond the ends of the outside wrapper; that there are many other chewing gums now manufactured and sold within the United States other than the so called Spearmint gum of the complainant herein using red, white and green

as the colors for the outside wrapper, and further that the colors described in said paragraph for cartons for containing individual packages of gum have long been used on cartons for gum and other products in the United States, and were so used prior to the year 1892.

Further these defendants state that the only peculiar and new mark of distinguishing feature of the trade dress of the complainant herein is a spear appearing in green color upon the cartons and bands, and in black color upon the wrappings of individual sticks of the complainant's Spearmint gum.

IV.

Answering Paragraph IV of the complainant's bill of complaint these defendants say they admit that L. P. Larson, Jr. Company is a corporation organized under the laws of the State of Illinois, and admit that L. P. Larson, Jr., is the president of said corporation, but deny that the affairs of said corporation are conducted and controlled by the said L. P. Larson, Jr., but state that the affairs of said corporation are directed and controlled by the board of directors of said corporation, and through its regularly constituted officers.

Further answering these defendants admit that the L. P. Larson, Jr., Company is engaged in the manufacture and sale of a chewing gum product under the trade name of "Peptomint", but deny that the defendant, L. P. Larson, Jr.,
48 is engaged in the manufacture and sale of said chewing gum product. And these defendants deny that the L. P. Larson, Jr. Company and L. P. Larson, Jr. have conspired together or with any other person or corporation to manufacture and sell a product having any fraudulent imitation of the trade dress employed by the complainant herein either as a wrapper, appellations or cartons, and deny that these defendants have now or ever have had any intention of wrongfully injuring the complainant's business, as charged in the said fourth paragraph of complainant's bill of complaint.

V.

Answering Paragraph V of the complainant's bill of complaint these defendants say they have no information as to the same, except as contained in the allegations of complainant's bill of complaint, and demand strict proof thereof.

VI.

Answering Paragraph VI of complainant's bill of complaint these defendants neither admit nor deny that the complainant or complainant's predecessor has continuously used the same trade dress for distinguishing its so called Spearmint product since the year 1894, and neither admit nor deny the extensive advertising alleged in said paragraph to have been indulged in by the said complainant, having no information concerning the same except that contained in the complainant's bill of complaint, and require strict proof thereof.

Further answering these defendants deny that the complainant has laid any particular emphasis upon any color scheme or wrapper formation employed by the complainant, but states that the emphasis employed by the complainant herein has been upon the figure of the spear appearing
49 upon the wrappers, bands and cartons containing its so called Spearmint gum.

Further answering these defendants deny that the purchasing public throughout the United States has become familiar with any color scheme adopted by the complainant, or any wrapper formation except the spear contained thereon, and that the said spear which is the trade mark of the said Spearmint product of the said complainant is the only distinguishing sign and symbol by which the said product is sought to be and is distinguished and known from other chewing gum products sold upon the markets of the United States.

VII.

Answering Paragraph VII of the complainant's bill of complaint these defendants deny that L. P. Larson, Jr., has even been engaged as an individual in manufacturing and selling chewing gum under any name whatsoever.

VIII.

Answering Paragraph VIII of the complainant's bill of complaint these defendants state that the defendant, L. P. Larson, Jr. Company, began the sale of Peptomint chewing gum prior to October 1st, 1911, having commenced such sales during the month of August, 1911. And these defendants deny that the said L. P. Larson, Jr., Company in the trade dress of Peptomint gum has in any way wrongfully simu-

lated the trade dress employed by the complainant for its so called Spearmint gum, and specifically these defendants deny that there is any simulation in the style of lettering. In reference to the shape of package these defendants state that the shape of the package, being five sticks of gum of a certain length each wrapped in an individual wrapper
50 and the said five sticks being enclosed in a band, has been employed by a multitude of gum manufacturers for more than twenty years last past, and prior to the engagement by the complainant or any of its predecessors in any gum business whatsoever; that the size and style of package is standard in the gum trade in the United States, the gum machinery manufactured for cutting and wrapping gums being with the exception of a few special designs of said standard size and type.

In reference to peculiar markings these defendants state that there are no peculiar markings of the wrappings or trade dress of Peptomint gum that simulate the trade dress of the complainant's Spearmint gum; that the form of wrapping is common to nearly all gums now upon the market, and has been employed a great many years, and prior to the entry of the complainant or any of its predecessors into the gum business, and is a standard form of wrapping in the gum trade, and deny that there is any similarity in the packages or trade dress employed by the defendant, L. P. Larson, Jr. Company, for its Peptomint gum to the trade dress employed by the complainant herein that would lead any one to mistake the Peptomint product for the Spearmint product, and these defendants deny that there are any dealers in chewing gum who have purchased packages of Peptomint gum for the purpose of selling the same as any other product whatsoever than Peptomint, which is a superior product to the Spearmint gum of the complainant herein, as the complainant well knows, and that it is not true that the purchasing public makes no distinguishment between the packages of Peptomint gum and the product of the complainant herein,
51 And these defendants state that the gum manufactured by the said complainant can not be palmed off for the Peptomint gum of the L. P. Larson, Jr. Company, nor can the said Peptomint gum be palmed off as the product of the complainant.

IX.

Answering Paragraph IX of the complainant's bill of complaint these defendants deny that they or either of them are

preparing to rush and flood the trade with vast quantities of chewing gum having the exact trade dress of the complainant's Spearmint gum, and deny that the complainant has any reasonable information or any honest belief to that effect, and deny that there has ever been or is now any intention or desire to in any way intimate the trade dress or product of the complainant's Spearmint gum, and deny that any Peptomint gum is inferior in any way to the Spearmint gum of the said complainant, but admit that it is not of the same flavor as that of complainant's Spearmint gum, and aver that the said Peptomint gum is of a superior grade and quality to the Spearmint gum marketed by the said complainant in that it is made of superior materials, and is of a quality and flavor different and superior to the product of the complainant. The defendant, L. P. Larson, Jr. Company, hereby makes an exhibit in this case of its cartons, being of two varieties, together with a package containing five sticks of chewing gum illustrating the carton, individual wrapper and package band of the product of the L. P. Larson, Jr. Company, identifying the said exhibit with the defendant's answer, and as a part thereof, the same being marked "defendant's exhibit cartons and package."

Further answering the said Paragraph 9 these defend-
52 ants deny that they or either of them copied, took or appropriated to their own use a certain box or carton substantially like the carton or box used by the complainant, and deny having adopted in any particular any distinguishing trade dress of the complainant herein.

Further answering these defendants state that the defendant, L. P. Larson, Jr. Company, has employed for enclosing a single stick of gum a wrapper of a light pink color, which is a different shade of pink from that employed by the complainant, and furthering answering state that there is no resemblance whatever between the black symbol employed by the defendant, L. P. Larson, Jr. Company, the word "Peptomint" upon the same running diagonally across the face of the wrapper, and being in lettering of an entirely different kind than that employed by the complainant herein, and bears no resemblance whatever to the spear employed by the complainant herein, and denies that there is any similarity between the individual stick wrappers of the defendant, L. P. Larson, Jr. Company, and of those of the complainant that could cause any purchaser or any one whomsoever to mistake the one for the other.

Further answering these defendants deny that they or either of them took or copied the outside wrapper used by the complainant in any particular whatsoever, and deny that there was any intention on the part of the defendants to in any way give a single package of gum or a single stick thereof, or a box of the same any appearance that could or would be mistaken for any product other than that of the defendant, L. P. Larson, Jr. Company, known as "Peptomint."

53 Further answering these defendants deny that they or either of them have any time in any way directly or indirectly offered to sell or desired to sell, or had any intention of selling Peptomint as any product whatever of the complainant, and deny that the complainant has any reliable information or any honest belief to such effect, as alleged in Paragraph X of complainant's bill of complaint, and deny that the public has in any way been misled and injured, but on the contrary thereof the public has recognized the said Peptomint gum as a superior product, and the same has sold upon the market purely upon its own merits, and because of its own excellent qualities, and that there have been no profits whatsoever that rightfully belong to the complainant diverted to the defendants or either of them, and these defendants deny that the amount in dispute in this cause exclusive of interests and costs exceeds One Hundred Thousand ($100,000.00) Dollars.

Further answering these defendants deny that they or either of them have offered to sell the Peptomint gum knowing and believing that the same would be accepted as the complainant's Spearmint gum, but on the contrary thereof have had no intention or desire that Peptomint gum become confused in any way with or accepted by anyone whomsoever as Spearmint gum, either as the Spearmint gum of the complainant or any other Spearmint gum upon the market.

Further these defendants deny that there have been any fraudulent or misleading representations by them or by anyone else handling a product known as Peptomint gum for the defendant, L. P. Larson, Jr. Company, or by circulars,

54 letter heads, advertisements or otherwise seeking to induce or tending to induce in any way the belief that Peptomint gum is the same product as that manufactured and sold by the complainant herein.

XI.

Answering Paragraph XI of the complainant's bill of complaint these defendants deny that they or either of them have done any act fraudulently or unlawfully, or with any intention whatsoever to invade or injure any rights of the complainant, or any one else, and deny the matters and things set forth in Paragraph XI of the complainant's bill of complaint.

Further answering these defendants deny that they have done anything whatsoever contrary to equity and good conscience, deny that they have ever fraudulently or wrongfully invaded or infringed in any way any rights of the complainant herein, and deny that they have with any fraudulent or wrongful intention whatsoever committed any act in the said bill of complaint charged against them, and deny that there has been any fraudulent competition in business, and any fraudulent and unlawful sale or substitution, or any opportunity for any unlawful sale or substitution of any goods of the defendants in lieu of complainant's goods, and deny that the complainant is entitled in equity to any of the relief, or any part thereof by it prayed for in its said bill of complaint, and as to any other matter or thing in the said bill of complaint of the complainant not herein specifically admitted or denied the defendants herein deny the same, and ask that
55 they be dismissed with their costs in this behalf most wrongfully sustained.

L. P. LARSON, JR. COMPANY
By L. P. LARSON, JR.
*Its President.*

(Seal)

L. P. LARSON, JR.

Attest:
E. J. GUTGSELL
*Secy.*

GEO. I. HAIGHT
*Solicitor for defendants.*

State of Illinois }
County of Cook } ss.

L. P. LARSON, JR. being first duly sworn on oath states that he is the president of L. P. Larson, Jr. Company, the defendant corporation herein, and that the foregoing joint and several answer of the defendants, L. P. Larson, Jr. Company and L. P. Larson, Jr. by him subscribed in his individ-

ual capacity and as president of the said defendant corporation is true in substance and in fact.

L. P. LARSON

Subscribed and sworn to before me this 4th day of November, A. D. 1911.

ALEXANDER C. MABEE
*Notary Public.*

(Seal)

(Endorsed) Filed Nov. 6, 1911, John H. R. Jamar, Clerk.

56 And afterwards on, to wit, the 8th day of November, 1911, this matter coming on to be heard, the following order was entered by the Court: Entered Nov. 8, 1911.

57 * * * No. 488 * * *

Wednesday, November 8, 1911.

Present: Hon. George A. Carpenter, Judge of Said Court.

Now come the parties by their solicitors and now comes on to be heard the motion of the complainant for a preliminary injunction. After hearing the arguments of counsel, the Court takes the matter under advisement.

58 And afterwards on, to wit, the 20th day of November, 1911, this matter coming on to be heard, the following order was entered by the Court: Entered Nov. 20, 1911.

59 * * * No. 30,563 * * *

Monday, November 20th, 1911.

Present: Hon. George A. Carpenter, Judge of Said Court.

Upon motion of the defendants, it is ordered by the Court that the complainant file an injunction bond in the sum of Twenty-five Hundred Dollars ($2500.00) with surety to be approved by the Court.

Entered Nov. 20, 1911.

60 And afterwards on, to wit, the 20th day of November, 1911, this matter coming on to be heard, the following order was entered by the Court:

61 * * * No. 30,563 * * *

Monday, Nov. 20, 1911.

Present: Honorable George A. Carpenter, District Judge.

PRELIMINARY INJUNCTION ORDER.

It appearing that the Bill of Complaint in the above entitled cause was filed on or about October 28th, 1911, together with affidavits, and it appearing that a Notice of Motion for a Preliminary Injunction to be made on November 8th, 1911, was duly served upon the defendants; and thereupon before the Honorable Judge George A. Carpenter at his court room in the Federal Building in the City of Chicago, State of Illinois, a motion was duly made in accordance with said notice by James R. Offield of the firm of Offield, Towle, Graves & Offield, solicitors for the complainant, and the defendants being represented by George I. Haight, their solicitor, and the Court being fully advised,

It is Ordered, Adjudged and Decreed and the Court doth hereby Order, Adjudge and Decree that the said defendants L. P. Larson, Jr. Company and L. P. Larson, Jr., their agents, clerks, servants and employees, and they and each of them are hereby restrained and preliminarily enjoined during the pendency of this suit, or until the further order of this Court, from

61½ manufacturing, selling, advertising, offering or announcing for sale, or supplying, chewing-gum in packages or boxes under labels substantially identical with or like the boxes, packages and labels of the complainant, employed for that purpose and marked for identification as "Complainant's Exhibit Complainant's Package"; or in boxes or packages or under labels which are calculated to deceive purchasers or consumers into the belief that the chewing-gum manufactured by the defendants is the Spearmint product of the complainant, or which will enable others by reason of the similarity to substitute or sell the product of the defendants to the ordi-

nary purchaser as and for the Spearmint product of the complainant.

Enter
CARPENTER,
*Judge.*
20 Nov. 1911.

The form of the foregoing Order is approved by:

*Solicitor for Defendants.*
Dated November ——, 1911.

62 And on to wit: the 20th day of November, A. D. 1911, there was filed in the Clerk's office of said court a certain Motion for Preliminary Injunction, in words and figures following to wit: Filed Nov. 20, 1911.

63 * * * No. 30,563 * * *

MOTION FOR PRELIMINARY INJUNCTION.

Opinion given 20th Nov. 1911.

Carpenter, District Judges: (orally)
Defendant objects to the issuing of the writ:

First: because the bill is sworn to upon information and belief. Inasmuch as the equities of this case may be determined upon the physical exhibits produced and made a part of the Bill, it will be necessary for this court to determine whether the verification of the bill is sufficient to support a temporary restraining order.

Second: It is urged that there is no prayer in the Bill for a temporary writ of injunction. Cases may be found in the books to the effect that such an order may not issue unless specifically prayed for. The Bill does pray for a perpetual injunction, and if the circumstances warrant, and the
64 proper protection of the complainant requires it, I am prepared to hold that the prayer for a perpetual injunction is broad enough to support the issuing of a temporary injunction. This court is much more concerned with the merits of the litigation than with the technical forms of equity pleading. Moreover, a special motion has been made for a preliminary injunction, and if need be it will be considered as

an amendment to the prayer of the original Bill, sufficient to allow the issuing of such a temporary writ.

Third: The parties to this litigation are manufacturers of chewing gum. The complainant has made use of certain color schemes and markings, both for boxes and the individual packages of gum. Its particular brand is known as "Spearmint." The defendants manufacture a brand advertised as "Peptomint." A casual examination of the size, shape and markings of the boxes and packages discloses immediately very marked differences. No dealer would be mislead for a moment into, thinking that the defendants manufactured and offered for sale the goods of the complainant. The fact remains, however, that the body of the defendants' box is colored yellow, as is that of the complainant. The lettering on the defendants' box is in red, green and white, as is that of complainant. The significant mark on complainant's product is a green bar spear with the word "Spearmint" upon it. The significant mark on the defendants' box is a green bar, without the spear-head, placed at an angle, over a red circle, with the word "Peptomint" upon it. The word "Spearmint" and the word "Peptomint" each contains nine letters. Each word is printed in white block letters upon the green bar. The defendants have their name in script, "L. P. Larson, Jr. Co.," in the same general type as the complainant employs the name "Wm. Wrigley, Jr. Co." The general color scheme made use of by the defendants, both on the box and on the individual packages, is almost identical with that made use of by the complainant. The similarity between the two sets of devices seems to the court to have been inspired by other than esthetic emotions. Of all the colors and shades that the defendants might have made use of, it is strange that those employed by the complainant should be the only ones that would satisfy the trade; that of all the possible methods of arrangement of the words and letters, it is equally strange that the defendants should have found that only the arrangement employed by the complainant would be effective. It would be rather a forward development of modern tendencies toward efficiency, to so hold.

Business men, clearly, would not be deceived by an examination of the exhibits in this case. Dealers know from whom they are buying and what they are buying, and are seldom, if ever, mislead, except by nearly exact counterfeits. The defendants do not represent their goods as that of the complainant. They do, however, sell their goods at a lower

66 price, and by simulating the complainant's cartons, boxes and packages, they have, without making any false representations, put it in the power of the less scrupulous traders to impose upon the public, and to dispose of the cheaper article as the article of the complainant. The court does not require, in cases of this kind proof of fraudulent dealing. If the devices and methods of the defendants are so similar to those of the complainant as to be calculated to deceive the casual purchaser into buying the goods of the defendants as the goods of the complainant, a court of equity ought to enjoin the defendants from a further prosecution of their methods of doing business.

No reasonable explanation is offered by the defendants of why they have adopted substantially the devices of the complainant. It is not shown that the gum business could not be successfully carried on by the different shaped boxes and packages, or by different color schemes and lettering. This court is of the opinion that the similarity between the defendants' boxes and packages and those of the complainant is not accidental. The action of the defendants appears to have been deliberate, and no explanation having been offered, the court cannot escape the conclusion that it was done for the sole purpose of gaining some unfair advantage by trading upon the established reputation of the complainant.

67 On the authority of:

*Charles E. Hires Co.* v. *Consumers' Co.* 100 Fed. 809.
*Lever* v. *Goodwin,* L. R. 36 Chancery Division, pg. 3.
*Reddaway* v. *Banham* (1896) Appeal Cases, 199, and
*Tarrant* v. *Hoff,* 76 Fed. 959.

the motion for a preliminary injunction will prevail, and the complainant may prepare an order by which the defendants, their clerks, servants and agents, are restrained, during the pendency of this suit, or until further order of this court, from manufacturing, selling, advertising, offering or announcing for sale, or supplying, chewing gum in packages, or boxes, under labels substantially identical with or like the boxes, packages and labels of the complainant, employed for that purpose; or in boxes or packages, or under labels which are calculated to deceive purchasers or consumers into the belief that the chewing gum manufactured by the defendants is the product of the complainant, or which will enable others to substitute or sell the product of the defendants as and for the product of the complainant.

(Endorsed) Filed Nov. 20, 1911, John H. R. Jamar, Clerk.

Filed Apr. 18, 1914.

68 And on to wit: the 18th day of April, A. D. 1914, there was filed in the Clerk's office of said court a certain Amended Answer, in words and figures following to wit:

69 • • • No. 30,563 • • •

THE JOINT AND SEVERAL AMENDED ANSWER OF THE L. P. LARSON JR. CO. AND L. P. LARSON, JR. DEFENDANTS TO THE BILL OF COMPLAINT OF WM. WRIGLEY JR. COMPANY.

These defendants reserving to themselves all right of exception to the said bill of complaint for amended answer thereto say:

I.

These defendants are without knowledge as to the matter set out in paragraphs I and II of said bill.

II.

These defendants deny that complainant's predecessors adopted and used as a distinguishing name to denote and identify one of its said products the word "Spearmint" in 1894, but aver that the complainant did not use the said name before the year 1895: these defendants also deny that said name "Spearmint" was not in 1894, and prior to its use by the complainant and any of its predecessors, in use in connection with chewing gum products, but on the contrary aver that it had been so used by Frank F. Pulver, of Troy and Rochester, New York, from the year 1889 continuously until November, 1913, when the complainant purchased for a

70 large sum the business of said Frank F. Pulver, and distled his factory and discontinued the business of manufacturing and selling "Spearmint" chewing gum theretofore carried on in Rochester, N. Y. by said Pulver in his own name and that of the Di-Gesto Company, controlled by him from 1890 to the date of said purchase. And these defendants aver that others had used the word "Spearmint" in connection with gum products before it was used by complainant's predecessors.

The defendants also deny that the complainant, or any of its predecessors, adopted a radically new form of trade dress

for its Spearmint product, both as to markings and color, as averred in the paragraph marked 111 of its complaint herein, or that it was original in its method of marking the outside wrapper or the individual sticks of gum, its cartons or in any respect whatever, or that it had used any color scheme continuously since 1894 in which the predominating colors were red, green, white and yellow.

On the contrary these defendants aver that the complainant and its predecessors, when they first brought out a "Spearmint" gum, wrapped the five sticks in tinfoil and did not commence to wrap the individual sticks in pink paper or adopt a so-called color scheme such as is described in the bill of complaint until the year 1907; that said color scheme, wrapping the individual sticks separately and binding together five such sticks into one package by a wrapper or counterband of less width than the length of the individual sticks of gum, so that the ends of the sticks of gum would project beyond the wrapper, and then putting twenty packages in a box and
71 five boxes in a carton, was a common practice long before the complainant or any of its predecessors ever entered the gum business, and was anticipated by many others; these defendants file herewith a printed sheet marked Exhibit 1, entitled "A Little History," which was prepared and circulated by the Di-Gesto Company, F. F. Pulver, Treasurer, Rochester, N. Y., all the statements of which and descriptions of various packages therein these defendants have verified, and therefore aver such statements to be true in connection with their denial of complainant's averments that it originated anything with reference to any gum package, except only its design for a spearhead as now used by it.

The defendants further aver that the complainant did not mark the individual sticks of gum in pink paper until the year 1907 and did not use the words "Wrigley's Spearmint Pepsin Gum" until the year 1906, having until that time described their package as "Wrigley's Spearmint Chewing Gum"; that they began the manufacture of Spearmint Gum in the year 1905 and not before and that the design of a spearhead upon which the word "Spearmint" is printed was not conceived, executed or used prior to the year 1905 and was not registered as a trade-mark until 1907.

That White's Yucatan Chewing Gum was done up in packages of five individual sticks in pink wrappers around each stick from the year 1887 and had become at the time the complainant and its predecessors first used pink wrappers one of

the best known and most popular brands of gum in the world, enjoying a large sale, and the complainant adopted pink wrappers for that reason; the "Spearmint" gum manu-
72 factured first by F. F. Pulver, of Troy, N. Y. in 1891 and afterward continuously from that date by the same person in the name of the Di-Gesto Company, of Rochester, New York, was also done up in packages of five individual sticks, each wrapped in pink wrappers, the outside wrapper of the combined five sticks being shorter than the individual sticks which projected beyond the ends of the outside wrapper, and that the complainant and its predecessors copied the Pulver package in all essential respects both as to wrappings, printed matter and color schemes, as will appear by reference to Exhibit 1, filed herewith and made a part hereof.

And defendants also aver that other well-known and widely sold gums manufactured before the complainant or any of its predecessors had entered the gum business, had adopted and widely used similar or like packages, both as to number of sticks, separate wrappings of individual sticks, wrappers of five sticks, with shorter outside wrappers, projecting ends of gum beyond outside wrapper and the same or nearly identical color schemes throughout. And the defendants further deny that the complainant and its predecessors in business had had or used since 1894, or during any considerable period since they entered the gum business, any fixed or continuous dress for their "Spearmint" product, but on the contrary aver that the color scheme, dress and wrappings have each been frequently changed as will appear by Exhibit 2, hereto attached and made a part hereof, which these defendants aver contains a true and accurate showing as to the wrappings,
73 color schemes and dates of first printing same by the complainant and its predecessors in business.

III.

These defendants aver that by reason of the facts averred in the paragraph marked 11, herein, and subsequent paragraps thereof, the complainant does not come into court with clean hands and is not entitled to relief herein; that the word "Spearmint" is a common English word descriptive in its nature and not subject to exclusive appropriation as a trade mark for chewing gum flavored with spearmint and that defendant's labels and color scheme complained of infringe no rights of the complainant.

IV.

The defendants deny that they have conspired together or with others to market and sell a product having a flagrant or fraudulent imitation of the complainant's trade dress, either as to the wrapper appellations or cartons, as alleged in paragraph IV. of complainant's bill, but on the contrary aver that they adopted a dress, wrapper appellations and cartons plainly distinguishable from complainant's and one that could not and upon information and belief the defendants aver never did deceive any purchaser in supposing when he purchased the gum of the defendant's manufacture, having the labels thereon now under temporary injunction in this court, that he was getting the complainant's "Spearmint" gum; the defendants aver upon like information and belief that the pretended purchases set out in the moving papers for said temporary restraining order were not made in good faith,
74 but were "plants" made to deceive and impose upon the court herein.

V.

The defendants are without knowledge of the alleged facts set out in paragraphs marked V and leave the complainant to make proof thereof.

VI.

The defendants deny that complainant's predecessor in 1894 adopted the peculiar and distinctive color scheme and design for wrappers and cartons to contain its spearmint product, and also deny that it has continuously used the same color scheme design or trade dress for distinguishing its product from the goods of other manufacturers, and that such color scheme, design or trade dress has appeared either upon the wrappers and cartons containing the complainant's product or in the advertising display cards, bill-boards, electric signs, magazines, trade journals and newspapers throughout the United States, in Canada and in other foreign countries, as averred by complainant in paragraph VI. of his bill, but on the contrary aver that the complainant appropriated every element of his said color scheme and design as described by him from others as and at the dates set forth in paragraph II. of this answer, and, as in said paragraph stated, has

changed the color scheme and design from time to time and has not now and never had any ownership therein.

The defendants also deny that the complainant has expended large sums in advertising any color scheme or design originated by the complainant or any of its predecessors in interest in its said business, except only the spearhead,
75 which it registered as its trade-mark and to designate its goods in 1907; that all other elements of its package, so far as trade dress, color scheme, number of sticks in a package, box, carton and wrappings, were stolen outright by the complainant with the design and purpose of getting the business of well established and known manufacturers, and give the complainant no rights as against these defendants. The defendants deny that the exhibit referred to at the end of paragraph VI. of complainant's bill illustrates the carton, wrapper, trade dress, manner of packing of complainant's product in 1894 and continuously followed since said date, but avers that the style of trade dress wrapper, etc. there set out was not adopted until the year 1906, and was then appropriated from others, except only the spearhead, which was first used in 1895, but in a form and appearance widely variant from the one in present use by the complainant.

These defendants, answering paragraph VIII of complainant's bill, deny that they first began the sale of Peptomint chewing gum in October, 1911, but on the contrary state that they had sold Peptomint chewing gum in cartons and wrappers and in the trade dress set out in the complainant's bill therein since July 1911 and had built up a lucrative business therein which was growing rapidly. These defendants also deny that they simulated the style of lettering, shape of package, peculiar markings, form of wrapping and general color scheme of the complainant's or that their packages, cartons or wrappings were given the peculiar visual appearance
76 of the complainant's package, or were such as to deceive or mislead intending purchasers:

And these defendants also deny that a certain number of dealers in chewing gum, either wholesale, jobber or retail dealers, can be found who have purchased the Peptomint packages from these defendants for the purpose of palming off the defendant's goods upon the public as the goods of the complainant and that either the complainants or these defendants have found as a matter of fact that the purchasing public makes no distinguishment between the two packages and that the defendant's goods can be palmed off as the goods of the complainant.

VIII.

These defendants, answering paragraph IX of complainant's bill, deny that they imitated the trade dress color scheme packages or cartons of the complainant or that its Peptomint gum is of an inferior grade or quality to complainant's gum (the defendants stating that if the averments of said paragraph of complainant's bill were true it appears that these defendants' Peptomint gum could not have deceived the public or injured the complainant)

These defendants aver the facts to be that their Peptomint gum is superior to complainant's Spearmint gum in flavor and cleanliness and is shown to be such on chemical analysis. That the flavors of Peptomint and Spearmint are very different and no persons using gum seeking one flavor would want the other; that the character and quality of complainant's
77 goods could not be injured by the sale of defendant's "Peptomint" except by contrast, as the complainant well knew.

And these defendants specifically deny that they copied, took or appropriated to their own use any carton or box substantially like the carton box used by the complainant, or the same color scheme markings, form of lettering and general trade dress of complainant's carton.

And these defendants deny that the complainant ever had or has now any property or right in said color scheme, markings, form of lettering, and general trade dress, or carton as a whole, as said complainant and its predecessors had appropriated all and each of these from other well-known manufacturers and with the purpose of palming off its product for that of others, and hence has no right to seek relief in a court of equity.

These defendants also deny that the complainant ever had or has now any exclusive right to the use of pink paper or white paper or to print in black letters the name of the product thereon, and deny that the pink paper and word "Peptomint" printed thereon were intended to deceive purchasers wanting "Spearmint" gum; but on the contrary they aver that the defendants' packages of the same general style as to color, size and markings had been used by other manufacturers of gum long before the complainant or its predecessors adopted the style, color scheme, etc. of such manufacturers of Spearmint gum, while these defendants differentiated their product in flavor, quality, name and markings.

78 These defendants deny that they took the outside white paper of the complainant as to color scheme, general marking, form of lettering, manner of wrapping, thereby giving the same visual appearance to a package containing five individual sticks, but on the contrary aver that their product was of the same size, the white paper was the same, the ink the same and the general visual appearance, aside from the lettering, of a package containing five individual sticks of gum the same as that used by nearly all gum manufacturers in the United States, while the lettering truly indicated the flavor and quality of the gum and its source and distinguished defendant's product from all others; that the defendants sought to put out and did put out a gum superior to the Spearmint gum and sold the same at as high or higher price.

That they never by advertisement or otherwise sought to make people believe that their product was Wrigley's Spearmint gum, or the product of the complainant company.

For further answer defendants state and charge the fact to be that the said complainant does not come into court with clean hands because the said complainant has and does make statements and representations upon the said package and wrapper and in advertisements relating to the same wherein the ingredients, qualities, effects, materials and efficiency of the said gum are untruthfully and falsely stated and set forth.

79 And these defendants deny that any of the their acts or doings in the premises constituted any violation of complainant's rights or that they have ever invaded or infringed the complainant's trade rights, or have ever done any act constituting unfair competition or calculated to enable unscrupulous persons to sell or substitute their product for the complainants.

On the contrary these defendants say that it is their wish and intention to sell their product on its own merits, and to continue to have it recognized as superior in all respects to the product of the complainant, as it is.

Further answering these defendants deny that they have done anything whatsoever contrary to equity and good conscience, deny that they have ever fraudulently or wrongfully invaded or infringed in any way any rights of the complainant herein, and deny that they have with any fraudulent or wrongful intention whatsoever committed any act in the said bill of complaint charged against them, and deny that there has been any fraudulent competition in business, and any fraudulent and unlawful sale or substitution, or any opportunity for any unlawful sale or substitution of any goods, of

the defendants in lieu of complainant's goods, and deny that the complainant is entitled in equity to any of the relief, or any part thereof by it prayed for in its said bill of complaint, and as to any other matter or thing in the said bill of complaint of the complainant not herein specifically admitted or denied the defendants herein deny the same, and ask that they be dismissed with their costs in this behalf most
80 wrongfully sustained.

L. P. LARSON JR. COMPANY.
By L. P. LARSON, JR.,
*Its President.*
L. P. LARSON, JR.

(Seal)

Attest:
E. J. GUTOSELT,
*Secy.*
ALDRICH & ALDRICH,
REED & ROGERS,
*Solicitors for Defendants.*

State of Illinois, } ss.
County of Cook. }

L. P. LARSON, JR., being first duly sworn on oath states that he is the president of L. P. Larson Jr. Company, the defendant corporation herein, and that the foregoing joint and several answer of the defendants, L. P. Larson, Jr. Company and L. P. Larson, Jr. by him subscribed in his individual capacity and as president of the said defendant corporation, is true in substance and in fact.

L. P. LARSON, JR.

Subscribed and sworn to before me this 13th day of April A. D. 1914.

A. G. LOVELESS,
*Notary Public.*

(Seal)

Filed Apr. 18, 1914

81 EXHIBIT 1.

Follows here. Not copied.

93 And on to wit: the 18th day of April, A. D. 1914, there was filed in the Clerk's office of said court a certain Exhibit No. 2, in words and figures following to wit:

## EXHIBIT 2.

1. Outside wrapper or counterband used prior to 1907. The five sticks were wrapped in tinfoil. No separate wrapping of individual sticks.

2. Same as 1 except change made in 1907 by putting spearhead on side of package and change in lettering.

3. Was first used in 1907. This increased length of counter-band and showing spearhead on all sides, red lines around. The individual sticks were wrapped in white paper, as illustrated by No. 4.

4. Is wrapper for individual sticks of the package of five sticks which was the beginning by the complainant of his wrapping of the individual sticks.

5. Is the present day counterband with the red lines around the lettering and spearhead omitted.

6. Pink wrappers for the individual sticks of package of five sticks first used by complainant in 1907.

7. Wrapper for individual stick used recently. Note difference in color.

8. Same as 7. Again note difference in color.

83 And afterwards on, to wit, the 18th day of April, 1914, this matter coming on to be heard, the following order was entered by the Court: Entered Apr. 18, 1914.

84 • • • No. 30,563 • • •

Saturday, April 18, 1914.

Present: Hon. George A. Carpenter, Judge of said court:

Leave is hereby granted Messrs. Aldrich & Aldrich and Messrs. Reed & Rogers to enter their appearance herein as solicitors for the defendants vice George I. Haight withdrawn.

85 And afterwards on, to wit, the 18th day of April, 1914 this matter coming on to be heard, the following order was entered by the Court: Filed Apr. 18, 1914.

86 • • • No. 30,563 • • •

Saturday, April 18, 1914.

On motion, It Is Ordered by the Court that leave be and the same is hereby granted the defendants to file instanter an amended answer, and ten days are given to both parties to file interrogatories herein. It Is Further Ordered that the motion of defendants for leave to take depositions herein be entered and continued.

87 And on to wit: the 18th day of April, A. D. 1914, there was filed in the Clerk's office of said court a certain Notice and Affidavit, in words and figures following to wit:

88 • • • • • •

Messrs. Offield, Towle, Graves & Offield
53 West Jackson Street,
Chicago.

Please take notice that on Tuesday Morning, April 14th 1914, at 10:00 o'clock, before His Honor, Judge Carpenter,

or the coming in of the court, we will move that we be substituted as the solicitors for the defendants and that we have leave to file as a substitute for the answer on file an amended answer (leaving the original answer on file) and that we be given leave to take testimony of the following named witnesses:

Peter J. Nagel, Rochester, N. Y.
H. H. Pulver, Adams Basin, N. Y.
Frank Thorman, Rochester, N. Y.
W. J. White, Niagara Falls.
John E. O'Connor, Rochester, N. Y.
S. W. Bennett, Rochester, N. Y.
Jacob G. Alt, Rochester, N. Y.
Robert L. Moore, Rochester, N. Y.
William B. McVeigle, Rochester, N. Y.
Mrs. R. L. Pringle, Rochester, N. Y.
A. S. Nesbitt, Geneva, N. Y.
Samuel Grove, Salem, Ohio.
Harry Hall, New York City, N. Y.
Henry Rowley, New York City, N. Y.
A. D. Faucher, Rochester, N. Y.
B. G. Adams, Brooklyn, N. Y.
Thomas Adams, Brooklyn, N. Y.
John Dunbar Adams, Brooklyn, N. Y.
Horatio M. Adams, Brooklyn, N. Y.
John H. Jones, Buffalo, N. Y.

by depositions de bene esse. This motion will be supported by the affidavit of L. P. Larson, Jr. a copy of which is handed you herewith.

ALDRICH & ALDRICH,
REED & ROGERS,
*Solicitors for Defendants.*

Received a copy of this notice and above mentioned affidavit this 11 day of April, 1914.

OFFIELD, TOWLE, GRAVES, OFFIELD,
*Solicitors for Complainants.*

89 • • • No. 30,563 • • •

Louis P. Larson, Jr. states that he is one of the defendants in the above entitled cause, and the president of and a large stockholder in the L. P. Larson, Jr. Company, the other defendant herein.

That when the injunction herein was granted he was severely damaged as he had a large amount of goods outstanding which he was obliged to call in and change the labels, as he desired to protect his customers; that he was not advised that it was necessary for him to use diligence in taking his testimony until he employed Charles H. Aldrich, Esq., of the law firm of Aldrich & Aldrich, on the eighteenth day of March, A. D. 1914; that said firm took about a week to examine the files and to make an examination of the authorities and the facts as to alleged infringement of the trade rights of the complainant, and then advised this defendant that they wished to investigate the facts as to the anticipation of the form of packages, color scheme, cartons by others, and also to obtain certain documentary evidence from Washington, D. C. which they deemed germane to the issues in the case and material to a proper defense of said cause. Thereupon this affiant, with Charles H. Aldrich, Esq., left Chicago for Rochester, New York, on the evening of March 25, 1914, arriving there March 26, 1914. While there they interviewed Peter J. Nagel, who in 1891 printed the labels for F. F. Pulver and again in 1901 the changed label, which are referred to and set out in the amended answer herein, and
90 which, the court can see by inspection, anticipate in every essential element the labels which the complainant asserts that it and its predecessors have used since 1894, and which facts affiant can prove if he is permitted to take the deposition of said Peter J. Nagel; that we also interviewed H. H. Pulver, Frank Thomas, Jacob G. Alt, and learned that they had each sold the gum manufactured by F. F. Pulver, first at Troy, N. Y., and later at Rochester, N. Y. from 1891 and 1892 on, and that the same had been manufactured and sold continuously since said time until November, 1913, when it was discontinued, and that affiant can prove these facts by said witnesses and others, if permitted to take depositions in said cause; that he interviewed Robert L. Moore, who knows F. F. Pulver well and who is conversant with his business and has been since 1891 and the style of package used by him and the

Digesto Company owned or operated by Frank F. Pulver, until November, 1913, and can prove by him and all the above named witnesses that said Pulver since 1891 has wrapped five individual sticks of gum in pink paper, bound together with a counterband of white paper shorter than the length of the sticks of gum so that the pink ends extend beyond the counterband, and that the word "Spearmint" and the words "Pulvers" and "Pepsin Gum" in red letters and afterwards the words "Digesto" and "Pepsin Gum" in red letters with the words "Spearmint" in green show a color scheme of white, red and green used continuously by said Pulver since 1891, and the complainant's color scheme was a close imitation thereof not distinguishable by the ordinary purchaser; that affiant left a representative at Rochester to interview other people who were supposed to have knowledge of the facts and is advised by such representative that William B. McVeigle, Mrs. R. L. Pringle, A. S. Nesbitt, Harry Hall and A. D. Faucher will all testify to these facts if their depositions are taken; that affiant is further informed and believes that John H. Jones, of Buffalo, New York, has knowledge of the same facts, and therefore affiant proposes to take his deposition; that affiant has seen W. J. White who was one of the pioneer gum manufacturers of the United States, who will testify that he wrapped the individual sticks of gum in pink paper from 1887 on, and that there was nothing new in that method of wrapping or having the counterband shorter than
the sticks of gum, and affiant therefore proposes to take
91 his deposition; that affiant is informed and believes that Henry Rowley and the Adams' formerly composing the firm of Adams' Sons Company of Brooklyn, N. Y. and Adams & Sons preceding the said corporation, put out a Spearmint gum similarly wrapped, many years before the complainant or any of its predecessors entered the gum business, and he expects to prove said facts by said persons; that affiants' solicitors have not yet finished their investigations, but have proceeded far enough to enable them in their opinion to establish that complainant's case is wholly unfounded and without equity; that since affiant's return from Rochester and Buffalo with Mr. Aldrich we have been awaiting answers to our inquiries, and Mr. Aldrich has been engaged in court part of the time, and through other engagements unable to prepare this application before this time.

That affiant cannot prove the above stated facts by any witnesses within the jurisdiction of this court, and it is there-

fore necessary to his defense herein that he be permitted to take the depositions of the witnesses as named, and such others as he may discover; that F. F. Pulver was not in Rochester at the time affiant was there, and affiant was unable to learn the facts as to the sale of his business to the complainant and the dismantling of said Pulver factory;

That affiant is informed that depositions were taken in case brought by Wm. Wrigley Jr. Company, the complainant herein, against the Continental Vending Company and Frank F. Pulver in the United States District Court, Western District of New York, and that the defendant Pulver proved that the—had used the labels complained of, since 1891, whereupon the said complainant arranged to pay the defendants a large sum of money to discontinue the business and allow a consent decree to be entered in favor of the complainant, which was done.

Affiant avers that he had no knowledge of the facts herein set forth until the twenty-sixth day of March, 1914, and that he has proceeded with all diligence since said date; that he cannot procure the attendance of said witnesses upon
92 the trial of said cause as they are beyond the jurisdiction of this court.

And further affiant saith not.

L. P. Larson, Jr.

State of Illinois, } ss.
County of Cook. }

Personally appeared before the undersigned, a Notary Public in and for said county and State, Louis P. Larson, Jr. to me personally known, and signed and made oath to the above and foregoing affidavit.

Witness my hand and notarial seal this 11th day of April A. D. 1914.

A. G. Loveless,
(Seal) *Notary Public.*

My commission expires October 10, 1915.

(Endorsed) Filed Apr. 18, 1914. T. C. MacMillan, Clerk.

Filed June 10, 1914.

95 And on to wit: the 10th day of June, A. D. 1914, there was filed in the Clerk's office of said court a certain Notice, in words and figures following to wit:

96 • • • No. 30,563 • • •

Messrs. Offield, Towle, Graves & Offield,
53 W. Jackson Boulevard,
Chicago.

You will please take notice that the defendant herein will take the testimony of Peter J. Nagel, H. H. Pulver, Frank Thomas, John E. O'Connor, Jacob Alt, S. W. Bennett, Robert L. Moore, William B. McVea, Margarette Pringle, A. D. Faucher, all of whom reside at the City of Rochester and State of New York, together with other witnesses, each and all of whom reside more than 100 miles from any place at which the District Court of the United States, for the Northern District of Illinois, Eastern Division, is appointed to be held by law, which depositions are for and on the behalf of defendant and will be taken before Anna R. McGrath, Room 513 Wilber Building, in the City of Rochester, New York, a Notary Public in and for the County of Monroe and State of New York, and who is not of counsel nor interested in any way in this cause; commencing on Monday, the 1st day of June, at 10:00 o'clock A. M. and thereafter, and from day to day as the taking of the depositions may be adjourned until the same shall be completed. Such testimony will be taken in accordance with the provisions of sections 863, 864 and 865 of the Revised Statutes of the United States and the Equity Rules of said Court.

Upon the completion of the testimony in Rochester we will take the depositions of Alfred H. Burt and John H. Jones, of Buffalo, New York, before Ferdinand E. Finsterbach, a Notary Public in and for Erie County, State of New York, who is not of counsel nor interested in the said cause, at the office of Hoyt & Spratt, 77 West Eagle Street, in said City. And upon the completion of said testimony we will take the testimony of W. J. White, at the office of Dudley & Gray, at Niagara Falls, Niagara County, New York, before Ronald G. Wright, a Notary Public, not of counsel nor interested in said cause, And upon the completion of the testimony at Buffalo and Niagara Falls we will take the depositions of Harry Hall, Henry Rowley, B. G. Adams, Thomas Adams, John Dun-

bar Adams, Horatio M. Adams and Louis Hicks, at the office of William P. Maloney, 43 Exchange Place, New York
97 City, County and State of New York, before Francis S. Castyglove, a Notary Public for the City and County of New York, who is not of counsel nor interested in said cause.

ALDRICH & ALDRICH
REED & ROGERS,
*Solicitors for Defendant.*

Received a copy of the above and foregoing notice this 19th day of May, 1914.

JAMES R. OFFIELD,
*Solicitors for Complainant.*

(Endorsed) Filed June 10th, A. D. 1914. T. C. MacMillan, Clerk.

98 And on to-wit: the 15th day of June, A. D. 1915, there was filed in the Clerk's office of said court a certain Bill of Complaint, together with Complainant's Exhibit 1 attached thereto, in words and figures following to-wit: Filed June 15, 1915.

99 • • • No. 488 • • •

## BILL OF COMPLAINT.

To the Honorable the Judges of the District Court of the United States, in and for the Northern District of Illinois, Eastern Division, in Chancery Sitting.

Wm. Wrigley Jr. Company, a corporation duly organized and existing under and by virtue of the laws of the state of West Virginia and a citizen of the State of West Virginia, Complainant, brings this its Bill of Complaint against L. P. Larson Jr. Company, a corporation organized under the laws of the state of Illinois and a citizen of the State of Illinois and doing business in the City of Chicago in said State;

Whereupon your orator complains and says:

### I.

That prior to the year 1894 Wm. Wrigley Jr. and William Scatchard were copartners in business and engaged in the manufacture, production, marketing and sale of a wide variety

of chewing gum products of every kind, nature and de-
100 scription known to that business industry, and in vending the same in large quantities throughout all the United States and territories thereof, and in adjacent foreign countries, and had a business of great extent; said copartnership and business of the said Wm. Wrigley Jr. and William Scatchard was conducted under the name of Wm. Wrigley Jr. & Co., and continued, from the inception of said business in the year 1892 until the year 1903, as a copartnership. That during the year 1903 the said copartnership was dissolved, whereupon your orator's predecessor was duly incorporated and became a body corporate by virtue of the laws of the State of Illinois, under the name of Wm. Wrigley Jr. & Co., and succeeded to the business, good-will, trade-marks, tradenames and other assets of said copartnership, the same, all and singular, having been fully conveyed, transferred and assigned by the said copartners to the said corporation Wm. Wrigley Jr. & Co.

II.

That on or about the 1st day of January, 1911, your orator, Wm. Wrigley Jr. Company, purchased the entire property and assets of Wm. Wrigley Jr. & Co., an Illinois corporation, together with the trade-marks, tradenames, tradedress, good will and trade rights in and relating to the business of your orator's predecessor, and that the business of your orator's predecessor acquired as aforesaid, and by it now carried on, consists of the manufacture, production and sale of chewing gum products, including a product known as Spearmint Gum, and all the trade-marks, tradesnames and trade-dress and good-will relating thereto.

III.

That prior to the year 1894 your orator's predecessor in business placed upon the market a chewing gum product
101 and adopted and used as a distinguishing name therefor the name Spearmint, and desiring to distinguish such product from the chewing gum products of other manufacturers, your orator's predecessor adopted a new form of trade-dress, both as to markings and color, the predominating colors being red, white and green for the outside wrapper or counter-band, while the five individual sticks of gum held together by the counter-band were separately wrapped in pink

wrappers, the outside wrapper or counter-band being shorter than the individual wrapper for the sticks of gum, so as to leave the ends of the individual sticks projecting beyond the ends of the counter-band and your orator and its predecessors have continued since the year 1894 to use the peculiar markings and predominating colors of red, white and green.

IV.

That the said defendant first began the sale of a chewing gum product under the name of Peptomint, about October 1, 1911, prior to which time the said defendant had never marketed or sold chewing gum in cartons or wrappers in the tradedress of said Peptomint Gum and the said cartons and wrappers of the said defendant corporation were considered so similar to the cartons and wrappers of the complainant, long used by said complainant upon its Spearmint product, as to constitute a fraudulent imitation of your orator's tradedress, whereupon suit was filed by your orator in the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, the title of the case being *Wm. Wrigley Jr. Company* vs. *L. P. Larson Jr. Company and L. P. Larson, defendants,* Equity No. 30,563, and in due course a Motion for a Preliminary Injunction was made and His
102 Honor, Judge Carpenter, rendered an Opinion in said above cause upon said Motion for Preliminary Injunction, said opinion being rendered upon the 20th day of November, 1911; a copy thereof being hereto attached to this your orator's Bill of Complaint and marked "Complainant's Exhibit No. 1."

V.

That your orator has widely advertised its Spearmint Gum product in every conceivable manner and form of publicity, having expended over Ten Millions of Dollars in making its Spearmint product known to the purchasing public and such advertising matter has largely consisted in reproductions of your orator's Spearmint package whereby the appearance of said package has become indelibly impressed upon the minds of the purchasing public as to general color scheme, form and arrangement of subject matter. Your orator further avers that the greater portion of advertising matter placed before the public by your orator has been color advertisements and throughout all of such advertisements the predom-

inating colors of red, white and green have been prominently displayed.

VI.

Your orator further avers that on or about July 1, 1914, your orator placed upon the market a peppermint flavored chewing gum product and desiring to distinguish said product, by name, from all other similarly flavored chewing gum products then upon the market, your orator adopted and used the trade name of mark Doublemint. Your orator desiring, however, to closely identify its Doublemint product with its world wide known Spearmint product, adopted and used the said colors of red, white and green heretofore used to distinguish its Spearmint product and in order that the two different packages of your orator's product might be
103 readily distinguishable from each other your orator adopted a green wrapper for the individual sticks of gum of peppermint flavor which are thus easily distinguished from the pink individual wrappers of the Spearmint product.

VII.

That the defendant L. P. Larson Jr. Company is a corporation organized under the laws of the State of Illinois, having an office and conducting its business in the City of Chicago, County of Cook and State of Illinois and in the Northern District and Eastern Division thereof, and is a resident and citizen of said Northern District, Eastern Division of Illinois; that said corporation is engaged in the manufacture and sale of a chewing gum product under the name of Wintermint and is now placing upon the market and selling a flagrant and fraudulent imitation of your orator's tradedress, as to wrapper appellations, for the purpose of injuring your orator's business to its own advantage and profit and to the great damage and detriment of your orator as hereinafter more fully set forth.

VIII.

That the manufacture and sale of different kinds and styles of chewing-gum products is the only item and branch of industry of your orator and that such chewing gum products are presented and sold largely by your orator to the purchasing retail stores handling such products, in cartons, boxes

and packages of different sizes and shapes, varying according to the different styles of chewing gum to be enclosed therein, and that all of said packages of your orator containing chewing gum products are encased or enclosed by a wrapper formation, having upon the separate wrappers particular and peculiar markings as to color, design and wording, giving a distinctive and attractive appearance to your ora-
104 tor's products as to such wrapper appellations thereon.

A box of your orator's Spearmint product and a box of your orator's Doublemint product is hereto attached to this your orator's Bill of Complaint and identified as Complainant's Exhibits No. 2 and No. 3 respectively. A box of the defendant's Wintermint product is hereto attached to this your orator's Bill of Complaint and identified as Complainant's Exhibit No. 4.

IX.

That the said defendant first began the sale of its Wintermint product subsequent to the time the said Doublemint product of your orator came upon the market and said defendant had never marketed or sold chewing gum in cartons, counter-bands or wrappers in the trade-dress of Wintermint Gum, herein in evidence, prior to the introduction of your orator's Doublemint product and that said defendant has simulated the style of lettering, peculiar markings, form of carton, form of wrapping and general color scheme thereby producing and giving to its style of package, counter-band and wrappers, the peculiar visual appearance of both your orator's Spearmint and Doublemint products and either of them and which, through long years of usage and great expenditure of money in advertising have become the predominating means for designating your orator's well known Spearmint and Doublemint products; your orator further averring upon information and belief that a certain number of dealers in chewing gum, both the wholesale jobber and the retail dealer, can be found who have purchased the said packages of chewing gum known as Wintermint from the Defendant, for the purpose of palming off the defendant's goods upon the public as the goods of your orator and that these defendants have found, as a matter of fact, that the purchasing public makes no distinguishment between the two packages and that the Wintermint gum product of this de-

fendant can be palmed off on the public and trade gen-
105 erally as either the product Spearmint or the product Doublemint of your orator.

X.

Your orator further avers, upon information and belief, that the said defendant has heretofore in many ways, directly and indirectly, offered and sold said product Wintermint as and for your orator's products, whereby the public has been mislead and injured and profits which have rightfully belonged to your orator diverted to the defendant, your orator further averring that the value of your orator's trade dress exceeds in amount more than Seven Millions of Dollars and your orator avers that the amount in dispute as to this defendant as herein set forth, exceeds exclusive of interest and costs, the sum of, to-wit: Fifty Thousand Dollars.

That this defendant has in many ways, as your orator is informed and believes and charges the fact to be, offered and sold its Wintermint product without explanation, said defendant knowing and believing that the same would be accepted by the public as being your orator's products favorably known as either Spearmint or Doublemint, to the great loss and injury of your orator actually sustained.

That the said defendant by fraudulent and misleading representations and by many dealers handling the product of the said defendant has endeavored to induce the belief that the Wintermint gum as manufactured by the defendant is one of the well known articles or chewing gum products in demand on the market and manufactured and sold by your orator.

XI.

That the acts of this defendant as above set forth are wholly without your orator's consent and in wrongful viola-
tion of your orator's rights as aforesaid and your orator
106 avers and charges the fact to be that the said acts have been committed by this defendant fraudulently, wilfully and unlawfully and that this defendant has exercised great skill in closely copying the wrapper appellations pertaining to your orator's Spearmint and Doublemint products, as shown by a comparison and a comparison of your orator's products with the Wintermint product of this defendant will show the spurious and fraudulent imitation of your orator's

products and all things pertaining thereto, even as to detail in the subject matter.

XII.

That the acts of the said defendant, as above set forth are contrary to equity and good conscience and constitute a fraudulent invasion and infringement of your orator's rights in the premises and an unlawful invasion and infringement of your orator's trade rights and trade-dress thereunder, as above set forth, and also your orator's equitable rights in any use of such packages, cartons, wrappers, marks or wording accompanying your orator's products as herein set forth existing in equity and good law, which in this Honorable Court will be protected and preserved; your orator averring that the acts of these defendants herein complained of have the effect and result of enabling and permitting false and fraudulent competition in business and fraudulent and unlawful sale and substitution by unscrupulous persons of the defendant's goods in lieu of your orator's goods with the accompanying trade-dress as herein set forth. And your orator prays that it may have the relief in the premises to which, in equity and good conscience, it is entitled, as the same shall appear upon the facts to be just and equitable, and that it may have such relief the same as if it were here and now made the subject of a specific prayer.

To the end, therefore, that your orator may obtain 107 relief in the premises in this Honorable Court, where alone it can obtain relief, it humbly prays:

1. That the said defendant, L. P. Larson Jr. Company be made defendant to this Bill and compelled to answer the same, and each and every allegation herein contained, but not under oath (answer under oath being hereby expressly waived) as fully as if directly interrogated as to each.

2. That the said defendant may be compelled to render before one of the Masters in Chancery of this Court, full, true, perfect and complete accounting of all profits of every description diverted from your orator, or received by said defendant, arising out of the defendant's commitment of the infringing acts above complained of and to account for and pay over all damages to your orators suffered by your orator by reason of such infringing and unlawful acts.

3. That the said defendant, L. P. Larson Jr. Company

and its representatives, servants, agents, attorneys and employes, and each of them, be restrained and in due order of time perpetually enjoined from further imitation or simulation of the packages or wrappers for chewing gum of the complainant, as to size, form and color in collocation with symbols and arrangement of printed matter employed by the complainant upon its said cartons, packages and wrappers and from imitating or simulating the said cartons, packages or wrappers of the complainant in any manner calculated to induce the public to believe that the Wintermint gum or other chewing gum or product of the defendant is the product of the complainant.

To the end that equity may be done and the relief herein prayed for, and all other that it may be righteous in the premises to administer, may be afforded your orator, may it please your Honor such relief to grant, and to award
108 against the defendant, L. P. Larson Jr. Company, a writ of subpoena of the United States District Court for the Northern District of Illinois, Eastern Division, commanding them on a certain day, hereinafter to be named, and under a certain penalty, to be and appear in this Honorable Court then and there to answer all and singular the premises and to stand by and perform and abide by such above or other order, direction and decree as may be made against it.

Your orator ever prays, etc.

WM. WRIGLEY JR. COMPANY
By A. G. COX
*Vice President.*

JAMES R. OFFIELD
*Solicitor and counsel for Complainant.*

State of Illinois }
County of Cook } ss.

A. G. COX, being first duly sworn, says that he is Vice President of the above named corporation, complainant, and is familiar with its business affairs; that he has read the said Bill and knows the contents thereof, and is familiar with the exhibits therein referred to, and with the facts recited in said Bill; that as to matters and things stated to be true the same are true in all respects and particulars, and as to the matters and things therein stated to be true upon

information and belief. that he verily believes the same to be true in all respects and particulars.

A. G. Cox

Subscribed and sworn to before me this 10″ day of June, 1915.

Sadie M. Ryan
*Notary Public.*

(Seal)

1933 The following is a photograph in colors showing the cover and sides of Complainant's Exhibit 3 to Bill of Complaint to No. 488 (Doublemint Box).

20 FIVE STICK PACKAGES
Wm. Wrigley Jr. Co.
CHICAGO
NEW YORK
TORONTO
LONDON, ENG.
DOUBLE WRAPPED
WRIGLEY'S
DOUBLE STRENGTH
DOUBLEMINT
DOUBLE WRAPPED
DOUBLE SPEAR TRADE MARK REGISTERED
CHEWING GUM
MADE BY THE MANUFACTURERS OF THE FAMOUS
WRIGLEY'S SPEARMINT
WM. WRIGLEY JR. CO.
CHICAGO, TORONTO
NEW YORK, LONDON
DOUBLE STRENGTH
WRIGLEY'S DOUBLEMINT 5¢ A PACKAGE

1937 The following is a photograph in colors showing the cover and sides of Complainant's Exhibit 4 to Bill of Complaint No. 488 (Wintermint Box).

# COOL AND REFRESHING

L.P.LARSON JR.CO.
CHICAGO, ILL.

None Genuine Without This Signature
L.P. Larson Jr. Co.
Chicago, U.S.A.

# COOL AND REFRESHING

L.P.LARSON JR.CO.
CHICAGO, ILL.

None Genuine Without This Signature
L.P. Larsen Jr. Co.
Chicago, U.S.A.

LARSON'S

L·P·L·

WINTERMINT GUM

IT'S PURE

TRADE MARK

REGISTERED

1935 The following are photographic copies in colors of the five stick gum package contained in the box marked "complainant's Exhibit" four to Bill of Complaint No. 488, and of the counterband around said five stick package.

109 * * * No. 30,563 * * *

## MOTION FOR PRELIMINARY INJUNCTION.

Opinion Given 20th November, 1911.

Carpenter, District Judge: (Orally)

Defendant objects to the issuing of the writ:

First: because the bill is sworn to upon information and belief. Inasmuch as the equities of this case may be determined upon the physical exhibits produced and made a part of the Bill, it will be unnecessary for this Court to determine whether the verification of the bill is sufficient to support a temporary restraining order.

Second: It is urged that there is no prayer in the Bill for a temporary writ of injunction. Cases may be found in the books to the effect that such an order may not issue unless specifically prayed for. The Bill does pray for a perpetual injunction, and if the circumstances warrant, and the proper protection of the complainant requires it, I am prepared to hold that the prayer for a perpetual injunction is broad enough to support the issuing of a temporary injunction. This court is much more concerned with the merits of this litigation than with the technical forms of equity
110 pleading. Moreover, a special motion has been made for a preliminary injunction, and if need be it will be considered as an amendment to the prayer of the original Bill, sufficient to allow the issuing of such a temporary writ.

Third: The parties to this litigation are manufacturers of chewing gum. The complainant has made use of certain color schemes and markings, both for boxes and the individual packages of gum. Its particular brand is known as "Spearmint." The defendants manufacture a brand advertised as "Peptomint." A casual examination of the size, shape and markings of the boxes and packages disclosed immediately very marked differences. No dealer would be mislead for a moment into thinking that the defendants manufactured and offered for sale the goods of the complainant, The fact remains, however, that the body of defendants' box is colored yellow, as is that of the complainant. The lettering on the defendant's box is red, green and white, as is that of complainant. The significant mark on complainant's product is a great bar spear with the word "Spearmint"

upon it. The significant mark on the defendant's box is a green bar, without the spear-head placed at an angle, over a red circle, with the word "Peptomint" upon it. The word "Spearmint" and the word "Peptomint" each contains nine letters. Each word is printed in white block letters upon the green bar. The defendants have their name in script, L. P. Larson, Jr. Co.," in the same general type as the complainant employs the same "Wm. Wrigley Jr. Co." The general color scheme made use of by the defendants, both in the box and on the individual packages, is almost identical with that made use of by the complainant. The similarity between the two sets of devices seems to the court to have been inspired by other than esthetic emotions. Of all the colors and shades that the defendants might have made use of, it is strange that those employed by the com-
111 plainant should be the only ones that would satisfy the trade; that of all the possible methods of arrangement of the words and letters, it is equally strange that the defendants should have found that only the arrangement employed by the complainant would be effective. It would be rather a forward development of modern tendencies toward efficiency, to so hold.

Business men, clearly, would not be deceived by an examination of the exhibits in this case. Dealers know from whom they are buying and what they are buying, and are seldom, if ever, mislead, except by nearly exact counterfeits. The defendants do not represent their goods as that of the complainant. They do, however, sell their goods at a lower price, and by simulating the complainant's cartons, boxes and packages, they have, without making any false representations, put it in the power of the less scrupulous traders to impose upon the public, and to dispose of the cheaper article as the article of the compainant. The court does not require, in cases of this kind, proof of fraudulent dealing. If the devices and methods of the defendants are so similar to those of the complainant as to be calculated to deceive the casual purchaser into buying the goods of the defendants as the goods of the complainant, a court of equity ought to enjoin the defendants from a further prosecution of their methods of doing business.

No reasonable explanation is offered by the defendants of why they have adopted substantially the devices of the complainant. It is not shown that the gum business could not be successfully carried on by different shaped boxes and pack-

ages, or by different color schemes and lettering. This Court is of the opinion that the similarity between the defendant's boxes and packages and those of the complainant is not accidental. The action of the defendants appears to have
112 been deliberate, and and no explanation having been offered the court cannot escape the conclusion that it was done for the sole purpose of gaining some unfair advantage by trading upon the established reputation of the complainant.

On the authority of:

*Charles E. Hires Co.* v. *Consumers' Co.* 100 Fed. 809.
*Lever* v. *Goodwin* L. R. 36 Chancery Division, Pg. 3.
*Reddaway* v. *Banham*, (1896) Appeal Cases, 199, and
*Tarrant* v. *Hoff*, 76 Fed. 959.

the motion for a preliminary injunction will prevail, and the complainant may prepare an order by which the defendants, their clerks, servants and agents, are restrained, during the pendency of this suit, or until further order of this court, from manufactuing, selling, advertising, offering or announcing for sale or supplying, chewing gum in packages, or boxes, under labels substantially identical with or like the boxes, packages and labels of the complainant, employed for that purpose; or in boxes or packages, or under labels which are calculated to deceive purchasers or consumers into the belief that the chewing gum manufactured by the defendants is the product of the complainant, or which will enable others to substitute or sell he product of the defendants as and for the product of the complainant.

(Endorsed) Filed Nov. 20, 1911, John H. R. Jamar, Clerk.

113 Northern District of Illinois, } ss.
Eastern Division. }

I, T. C. MacMillan, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete copy of the certain Opinion filed in the Clerk's office of the Circuit Court of the United States for the Northern District, of Illinois, on the twentieth day of November, 1911, in the cause entitled *Wm. Wrigley Jr. complainant* v. *L. P. Larson Jr. Co.*, and L. P. Larson, Jr., defendants, as the same appears from the original thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office, in the (Seal) City of Chicago, in said District, this tenth day of April, 1912.

T. C. MacMillan,
*Clerk.*

t By John H. R. Jamar,
*Clerk.*

Filed, June 15, 1915. T. C. MacMillan, Clerk.

114 And on to wit: the 6th day of July, A. D. 1915, there was filed in the Clerk's office of said court a certain Answer, in words and figures following to wit: Filed July 6, 1915.

115 • • • No. 488 • • •

## ANSWER.

### I.

The defendant is without knowledge as to the matters set out in paragraphs I and II of said bill.

### II.

The defendant denies that the complainant's predecessor adopted and used as a distinguishing name to denote and identify one of its product, the name "Spearmint" and that with the design of distinguishing such product from the chewing gum products of other manufacturers a new form of trade dress, both as to markings and color, of which the predominating colors were red, white and green for the outside wrapper or counterband, while the five individual sticks of gum held together by the counterband were separately wrapped in pink wrappers, the outside wrapper or counterband being
116 shorter than the individual wrappers for the sticks of gum, so as to leave the ends of the individual sticks projecting beyond the ends of the counterband, was adopted by complainant and that the complainant and its predecessor have used the said name and dress since the year 1894; but on the contrary this defendant avers that the said word and trade dress, as described in the complainant's bill, had been so used by Frank F. Pulver in Troy and Rochester, New York,

from the year 1889 continuously until November, 1913, when the complainant purchased for a lrage sum of money the plant or factory of said Frank F. Pulver and dismantled his factory and discontinued the manufacturing and selling of Spearmint chewing gum theretofore carried on in Rochester, New York, by said Pulver in his own name and that of the Di-Gesto Company, controlled by him from 1890 to the date of said purchase. And this defendant further avers that others had used the word Spearmint in connection with gum products before it was used by complainant's predecessors.

III.

This defendant also denies that the complainant or any of its predecessors adopted a radically new form of trade dress for its Spearmint product, both as to markings and color as averred in the paragraph marked III of its bill herein, or that it was original in its method of marking the outside wrapper or the individual sticks of gum, its cartons, or in any respect whatever, or that it has used any color scheme continu-
117 ously since the year 1894 in which the predominating colors were red, white and green. On the contrary, this defendant avers that the complainant and its predecessor, when such predecessor first brought out a Spearmint gum, wrapped the five sticks in tinfoil and did not commence to wrap the individual sticks in pink paper or adopt any color scheme such as is described in the bill of complaint until the year 1907; that the said color scheme, wrapping the individual sticks separately and binding together five such sticks into one package by a wrapper, or counterband, of less width than the length of the individual sticks of gum so that the ends of the sticks of gum would project beyond the counterband, was a common practice long before the complainant or any of its predecessors ever entered the gum business and was anticipated by many others.

This defendant files herewith a printed sheet marked "Exhibit 1", entitled "A Little History", which was originally prepared and circulated by the Di-Gesto Company, F. F. Pulver, Treasurer, Rochester, New York, and which has been reproduced by this defendant, this defendant having added thereto a description of the complainant's "Doublemint", with the date of its adoption, and of this defendant's "Wintermint", and the date of its use and adoption, all the statements of which Exhibit 1, together with the description and

reproductions of various packages therein shown, are true, and this defendant asks that said Exhibit I may be taken as a part of its answer herein.

118 IV.

This defendant admits it began the sale of "Peptomint" gum in the year 1911 and states it had built up a good business therein when the preliminary injunction order referred to in paragraph IV of complainant's bill herein was entered, whereupon this defendant discontinued the use of the dress complained of and adopted a package and trade dress which does not in any way infringe on any of the alleged packages of the complainant herein, this defendant at the same time and now denying that any trade dress, package, carton or paper ever used by this defendant was designed to or was in fact an infringement of any trade dress, package, wrapper or carton of the complainant or to the exclusive use of which the complainant ever was entitled. And this defendant avers that there was filed with the said bill, in which said injunction order was issued, a copy of an order entered in the Southern District of New York by the Honorable Charles M. Hough in the case of *Wm. Wrigley Jr. Company* v. *the Grove Company,* together with the affidavit of James R. Offield, Esquire, in which he said, with reference to said decree and said cause, "that a final decree was entered by his honor Judge Hough on the 8th day of August, 1910, a printed copy of said final decree being attached to this affidavit and marked Offield Exhibit A; that the defendants thereupon appealed from the decision of his Honor Judge Hough upon the record hereto attached to this affidavit and marked "Offield Exhibit B", that upon a full

119 hearing in the Court of Appeals a decision was rendered in favor of the complainant and a copy of the final decree entered on the 20th day of December, 1910, is hereto attached and designated as "Offield Exhibit C". That this partial statement of the facts was, as this defendant is informed and believes, intended in effect to represent to this Court that the decree of his Honor Judge Hough had been affirmed and that the complainant's rights to the use of the word "Spearmint" are established and when used in a prominent way either in advertising matter, on labels or on boxes is a good and valid trade name or mark for chewing gum and that the title thereto and exclusive right to the use of the same in the manner above specified was then vested in the complainant, whereas, in fact,

the said complainant and the said Offield then well knew that so much of the said decree of his Honor Judge Hough, as held, as above stated, had been then overruled and set aside by the Circuit Court of Appeals, Second Circuit, and that only such part of the decree of his Honor Judge Hough was found that the Grove Company's trade dress infringed the trade dress of the complainant was approved, as will more fully appear from the report of the opinion of the Circuit Court of Appeals, Second Circuit, in said cause, reported in 183 Fed. 99, which opinion was not filed by Mr. Offield in this Court. That said complainant at the same time deceived the Court by asserting in its said bill that it had originated and was the first to use the trade dress described in its said bill when the
120 complainant well knew that neither it nor its predecessors had originated the color scheme, trade dress, manner of putting up the packages and cartons there claimed and described, but that it and its predecessors had copied the same from the trade dress, color scheme, packages and cartons of F. F. Pulver and the Di-Gesto Company, owned and controlled by said F. F. Culver, then doing business at Rochester, New York, and whose gum in said trade dress with the same color scheme and similar words, like packages and cartons had been widely sold throughout the United States prior to and during the use of said trade dress, color scheme, packages, labels, cartons, etc., by the complainant or its predecessors, and was being so used at the time of the adoption of the same by complainant's alleged predecessor, who had full knowledge thereof; that in adopting said Pulver's and the Di-Gesto Company labels, trade dress, color scheme, packages, cartons, etc., for its Spearmint gum the complainant did as it and its predecessors have done with respect to every successful brand of gum that has been put out by other gum manufacturers in the United States; that in many instances, and this defendant believes in every instance, when any gum manufacturer in the United States has put out a brand of gum which found popular favor and had a large sale the said complainant with the purpose of absorbing and injuring the trade of such manufacturer has adopted or so closely imitated the trade dress, color scheme, packages, cartons, etc., of such manufacturer, as this defendant set out in its amended answer filed in
121 the cause in which said preliminary restraining order was issued by this Court, and that this defendant has since taken evidence in said cause and clearly established the fact, and this defendant avers at all times since the complainant

and its predecessor put out its said Spearmint package to and including October 27, 1911, the said complainant has been an infringor of the trade dress, color scheme, wrappers, wrapper appellations, packages and cartons used, advertised and sold by F. F. Pulver throughout the United States and Canada and in interstate commerce.

And further to deceive and mislead this court the complainant at the same time, to-wit, October 27th, 1911, filed with its said bill certain affidavits tending to show confusion by buyers of gum as between the complainant's "Spearmint" gum and this defendant's "Peptomint," as it was then dressed and sold, which affidavits were known by the complainant to be untrue and that the sale referred to therein had never in fact taken place. Because of all of which acts of deceit, false averment and misrepresentation this defendant says that the complainant has no standing in a court of equity and does not come here with clean hands.

## V.

This defendant is without knowledge as to the matters set out in Paragraph V of the complainants bill herein, but states as heretofore set out herein that the said package alleged to be so widely advertised by the complainant has not by any means been a uniform package, but that the name and
122 dress and general appearance of the packages and the method of wrapping the individual sticks have varied from year to year since the complainant decided to appropriate the general trade dress, color scheme, wrappers, labels and cartons and packages of the gum manufactured by F. F. Pulver and the Di-Gesto Company, as heretofore averred.

## VI.

This defendant admits that in or about July 1914, the complainant placed upon the market a peppermint flavored chewing gum product and that it adopted and used the trade name or mark of "Doublemint" in so doing. This defendant also admits that the complainant adopted and used red, white and green in the wrappings of his individual packages of gum and that the complainant used a green wrapper for the individual sticks of gum, and that such green wrapper and general dress of the said Doublemint product easily distinguished the same from the pink individual wrappers of the Spearmint product, and that there was no danger of any

confusion between said Doublemint and Spearmint packages, but this defendant denies that the complainant adopted same for the purpose of distinguishing the Doublemint packages from the Spearmint package theretofore manufactured and sold by the complainant, but states that said complainant, true to its policy which has marked its entire business history to appropriate wherever possible, and so far as possible, the labor and expenditure of others, and desiring
123 to injure and make a flagrant and fraudulent imitation of this defendant's trade dress of a product, then and since December, 1913, manufactured and sold by this defendant, known as "Wintermint" the complainant adopted the trade dress of this defendant as to wrapper and appellations, and to the great damage and detriment of this defendant, as more fully hereinafter set forth.

VII.

That the manufacture and sale of different kinds and styles of chewing gum products and mint lozenges is the business of this defendant, and that such chewing gum products are presented and sold largely by this defendant to the purchasing retail stores handling such products in cartons, boxes and packages of different sizes and shapes, varying according to the different styles of chewing gum to be enclosed therein, and that all of such packages of this defendant containing chewing gum products are enclosed by a wrapper formation, having upon the separate wrappers particular and peculiar markings as to color, design and wording, giving a distinctive and attractive appearance to this defendant's products as to such wrapper appellations thereon, and plainly and clearly indicating and announcing their origin and manufacture by defendant. That this defendant, in pursuance of this practice and custom of marking its packages, in December, 1913, decided to put upon the market and widely advertise and attempt to sell a product to be known as "wintermint," and in order to distinguish it from
124 any other package upon the market, as well as defendant's then known "Peptomint" package, and identify it as defendant's product, this defendant decided to wrap the individual sticks of gum, five of which sticks constitute a package, in green paper and to make the counterband of less width than the length of the individual sticks of gum, so that the green paper would extend beyond the said counterband at each end of said sticks; that the counterband was

marked with red and green letters as shown by a box of said Wintermint hereto attached and made a part of this answer and of the same general style, except the name "Wintermint," as this defendant's Peptomint, a box of which is also attached hereto, (said boxes being marked respectively Exhibits 2 and 3) and made a part of this defendant's answer herein. That in January, 1914, this defendant commenced to advertise and widely sell throughout the United States, the said Wintermint product in said trade dress; that the same met with a large and extensive sale and was immediately appreciated by the buying public, whereupon the complainant herein, being fully advised in the premises and well knowing that said package had originated with this defendant and was meeting with an extensive sale throughout the United States, simulated the style of lettering, peculiar markings, form of wrapping and general color scheme of this defendant, even to wrapping the individual sticks of gum in green paper, which the said complainant had never theretofore done, thereby producing and giving to its type of package, counterband and wrappers the peculiar visual ap-
125 pearance of this defendant's Peptomint and Wintermint products, which this defendant was then and is now engaged in manufacturing and selling; and this defendant admits that a certain number of dealers in chewing gum, both wholesaler, jobber and retailer can be found who have purchased packages of complainant's "Doublemint" supposing that they were buying defendant's "Wintermint"; that this defendant avers that said complainant adopted said style and trade dress for "Doublemint" for the purpose of palming off its goods upon the public as the goods of this defendant, and this defendant admits that the purchasing public makes no distinguishment between the packages of Doublemint as manufactured and sold by the complainant, and the Wintermint gum product of this defendant and that the complainant is able to and does palm off upon the public and trade generally its product Doublemint as the Wintermint of this defendant.

## VIII.

This defendant denies that it has in many ways, or in any way, directly or indirectly, offered and sold said product Wintermint as and for the complainant's product, this defendant averring that defendant's product is in every respect superior to that of complainant's Doublemint or Spearmint, but it ad-

mits that the public has been misled and injured by the conduct of the complainant herein and that confusion has resulted from the complainant's adoption of this defend-
126 ant's Wintermint color scheme and trade dress and that profits which have rightfully belonged to this defendant have been diverted to the complainant herein, as said complainant conceived and designed they should be, and this defendant has been injured by said complainant's unlawful and unwarranted conduct as herein set forth, in a large sum, exclusive of interest and costs, exceeding the sum of three hundred thousand dollars ($300,000.00). This defendant denies that it has offered and sold its Wintermint product without explanation, but states that it has at all times advertised it as its own product, superior to that of any other product of its kind upon the market, and that the complainant has sought and has succeeded, as this defendant is informed and believes, and states the fact to be, in palming off its Doublemint for the goods of this defendant to the great injury and loss of this defendant, and that said complainant has made false, fraudulent and misleading representations, not only to the trade, but to this court, to induce the belief that it originated the trade dress, form of package, color scheme, etc., of the products handled by it, when in truth and in fact, as the complainant has at all times well known, this defendant was the originator of said color scheme shown by said Wintermint package and had manufactured and sold said Wintermint packages successfully long before the complainant adopted the same for its "Doublemint" package.

This defendant by way of counterclaim herein states that in the year 1913, being then engaged in the manufacture
127 and sale of chewing gum, it decided to put out a gum product to be known as "Wintermint," and to that end it caused to be designed a package, together with individual wrappers, counterbands, etc., in all respects identical with the package, individual wrappers, counterband, lettering and color scheme shown by the wrappers, counterband, package, color scheme and carton of Exhibit 2 filed with this answer and counterclaim; that as wintergreen was one of the flavors used in said gum, this defendant and counterclaimant decided to adopt green as the color for the paper wrapping the individual sticks of gum, and desiring to give said Wintermint package a distinguishing dress that would enable it to be easily distinguished from any other package of gum product then upon the market it consulted with persons whom it

deemed fully competent to advise him with reference thereto, being actuated by no other purpose or desire than to adopt a package that would be indicative of its product, individual in its character and easily distinguishable from any and all other packages of gum products then upon the market, it adopted the dress and package shown in Exhibit 2 to defendant's answer and counterclaim; that in January, 1914 it began to advertise and sell said Wintermint product so wrapped and packed in boxes and cartons, as is shown by said Exhibit 2; that shortly thereafter, to wit: February 3d, 1914, it filed with the Commissioner of Patents the proper papers to enable it to claim and monopolize within the United States

the trade name of Wintermint, and from the date of
128 January, 1914, used, sold and has had on sale extensively

throughout the United States and in commerce between the States continuously said Wintermint gum with the trademark and in the trade dress shown in Exhibit 2 filed herein; that said product has met with an extensive sale throughout the United States and was being pushed as rapidly as this defendant was able to push the same when in the latter part of July, 1914, the complainant herein and defendant to this counterclaim, with the design of injuring and destroying this defendant's and counterclaimant's business and appropriating the same to its own use, prepared and for the first time offered for sale a gum product which it called "Doublemint", and the complainant and defendant to this counterclaim fraudulently and maliciously, as this defendant is informed and believes, adopted and closely copied for its said Doublemint, in all respects except the name, this defendant's wrapper, color scheme, trade dress and general appearance of this defendant and counterclaimant's package known as Wintermint, and proceeded with its great wealth and resources to widely advertise the said Doublemint so fraudulently dressed and prepared as aforesaid, with the design and purpose of monopolizing the trade and for the purpose of destroying the sale of this defendant's product known as Wintermint; that said complainant and defendant to this counterclaim has been largely successful in its said fraudulent and wrongful scheme, and that through the simulation of the style of lettering, peculiar markings, form of wrapping and general color

129 scheme of this counterclaimant's Wintermint package,

the said complainant and defendant to this counterclaim has been able to deceive and mislead a large number of dealers in chewing gum and purchasers of chewing gum into purchas-

ing said Doublemint of complainant when said purchasers supposed they were purchasing the Wintermint product of this defendant and counterclaimant; that said markings have been so closely copied that this counterclaimant avers that confusion necessarily results as between said Doublemint and Wintermint products, and that the buying public, whether the jobber, retail dealer, or general purchasing public, buying chewing gums, cannot readily distinguish between the two packages, all of which this defendant and counterclaimant charges, was designed and intended by the complainant when it entered upon its fraudulent course aforesaid; that said complainant and defendant to this counterclaim has throughout its entire history as a manufacturer of gum adopted the same course as was adopted with reference to the introduction of its Doublemint, as against other manufacturers who have succeeded in introducing a brand of gum that had found public favor; that there has been, as this defendant and counterclaimant avers, no successful brand of gum—meaning thereby a brand of gum which has found a general and wide sale throughout the United States—put out by any manufacturer in competition with the complainant herein, which said complainant has not proceeded to closely copy in every respect, in the color scheme, trade dress and general appearance, with the design of injuring its competitor and ap-
130 propriating to its own use the trade of such manufacturer of the successful brand; that in pursuance of its general scheme of deceiving the buying public, and consistently therewith, the complainant has likewise repeatedly deceived the courts, as this defendant and counterclaimant is informed and believes, and when it has been unable to overcome the opposition it has purchased the interests which were supposed to be dangerous to its plans and has caused purported decrees to be entered after it had become the owner of both interests and the proceeding had ceased to be in reality an adversary one, purporting to establish the priority and rights of the complainant company to such trade name and trade dress; that the complainant has asserted in its bill filed herein that it and its predecessors in business originated and first used the trade dress, color scheme, appellations, names, packages and cartons shown by its "Spearmint" packages and carton filed as an exhibit with its said bill when it well knows that it did not originate or first use said trade dress, color scheme, wrappers, appellations, words, package or cartons, or any of them, but appropriated or filched them

from F. F. Pulver and the Di-Gesto Company, which last named company had succeeded to the business of F. F. Pulver and was controlled and largely owned by said F. F. Pulver; this defendant avers that said Pulver and said Di-Gesto Company had used said trade dress, color scheme, wrappers, appellations, names, words, package and cartons since the
131 year 1889 and each and all were infringed by the complainant and its predecessors with the purpose and intent of injuring the business of said F. F. Pulver and the Di-Gesto Company and not wholly succeeding in crushing said Pulver and the Di-Gesto Company by such infringement the complainant brought two suits against Frank F. Pulver and others, one in the Southern District of New York and one in the Western District of New York. A large amount of testimony was taken in the cause pending in the Southern District of New York, and the defendant Pulver established clearly and even to the satisfaction of the complainant there and here the priority of the said Pulver by many years in the use of the trade dress, color scheme, method and manner of wrapping the individual sticks, the package of five sticks and the box or carton consisting of twenty packages, whereupon the said complainant purchased for a large sum, amounting, as this defendant is informed and believes, to several hundred thousand dollars, the factory of said Pulver, which he dismantled and discontinued; that this defendant is informed and believes and therefore avers that one of the terms or conditions of such purchase by the complainant was that a portion of the agreed consideration paid and to be paid by said complainant to said Pulver was that said Pulver should keep secret the said settlement and should by himself and his agents refrain from advising others of the true history of the Spearmint package, said color scheme and trade dress, and to secure his so doing a part of the
132 consideration was withheld or put in trust with certain provisions as to forfeiture of the income and part of the principal thereof should said Pulver, as this defendant is advised, lend aid or comfort to the enemy; and this defendant is further informed and upon such information avers that the complainant and its there and here solicitors, after it had thus arranged with said Pulver and controlled both sides of the suits then pending in the Southern and Western Districts of New York, suppressed the testimony so taken as aforesaid, which had compelled such settlement, and caused a decree in its favor and a finding that Pulver had infringed

its rights to be entered in both the cause pending in the Western District of New York and also in that pending in the Southern District of New York; that at the time the complainant brought its suit herein it well knew that its averments as to the ownership and use of its labels described in its bill herein were wholly false and unfounded, as well as its averments that this defendant had copied or imitated its color scheme or trade dress and only brought its suit as a part of its policy as herein described of not only copying and appropriating the trade dress and packages of its successful rivals, but also to overwhelm and annoy such rival manufacturer with litigation and expense; that such was the purpose and object of the complainant in bringing this suit, and by reason of all of which the said complainant is not entitled to come into this court and claim relief concerning said
133 package, labels, color scheme, or any of them, as against this defendant, nor is said complainant entitled to any relief in a court of equity.

IX.

That the acts of the said complainant and defendant to this counterclaim as above set forth are contrary to equity and good conscience, and constitute a fraudulent invasion and infringement of this counterclaimant's rights in the premises and an unlawful invasion and infringement of this defendant's and counterclaimant's trade rights and trade dress in the premises as above set forth, and of this defendant's and counterclaimant's rights to the use of such packages, cartons, wrappers, marks or wording accompanying its products as herein set forth; this defendant avers that the acts of the said complainant have the effect and result, and were designed and intended so by complainant, of enabling and permitting false and fraudulent competition in business, and fraudulent and unlawful sale and substitution by unscrupulous persons of the complainant's goods in lieu of this defendant's and counterclaimant's goods with the accompanying trade dress as herein set forth; that said unlawful sales and substitution are intended by and well known to complainant. And this defendant therefore files its counterclaim herein and prays that it may have the relief in the premises by injunction and otherwise to which in equity and good conscience it is entitled, and as the same shall appear upon the facts to be just and equitable.

134 To that end therefore this defendant and counterclaimant prays that the said complainant, Wm. Wrigley Jr. Company, and its representatives, servants, agents, attorneys and employes, and each of them, be restrained at first during the pendency of this suit and afterward perpetually enjoined from all simulation or imitation of the packages or wrappers for chewing gum of this defendant, as to size, form and color in collocation with symbols and arrangement of printed matter employed by this defendant upon its said cartons, packages and wrappers, and from imitating or simulating said cartons, packages or wrappers of this defendant in any manner calculated to induce the public to believe that the Doublemint product or other chewing gum product of the complainant is the product of this defendant, and that the said complainant may be compelled to render before one of the masters in chancery of this court a full, true and perfect and complete accounting of all profits, of every description diverted from this defendant and counterclaimant in the sale of said Doublemint or received by said complainant, arising out of said complainant's commitment of the infringing acts above complained of, and account for and pay over all damages that this defendant may have suffered by reason of such infringement and unlawful acts, and that upon final hearing this defendant and counterclaimant may have all such further and other relief in the premises as the court shall deem just and consistent with the principles of equity.

135 And so this defendant and counterclaimant will ever pray.

L. P. LARSON JR. COMPANY.
By L. P. LARSON, JR.,
*President.*
*Defendants.*

CHARLES H. ALDRICH,
FRANK F. REED and
EDWARD S. ROGERS,
*Solicitors for Defendant and Counterclaimant.*

State of Illinois, } ss.
County of Cook. }

L. P. LARSON, JR., being first duly sworn, says that he is President of the above named L. P. Larson Jr. Company, defendant and counterclaimant, and is familiar with its business

affairs, that he has read the said answer and counterclaim and knows the contents thereof, and is familiar with the exhibits therein represented, and with the facts recited in said answer and counterclaim, and that as to matters and things stated to be true the same are true in all respects and particulars, and that as to the matters and things therein stated to be true upon information and belief that he verily believes same to be true in all respects and particulars.

L. P. LARSON, JR.

Subscribed and sworn to before me this 3rd day of July, A. D. 1915.

A. G. LOVELESS
*Notary Public*

Filed July 6,—1915 Mac Millan Clerk

136 Exhibit 1 Follows here—not copied

(Endorsed) Filed July 6—1915 T. C. MacMillan, Clerk

Entered July 27, 1915.

137 And afterwards on, to wit, the 27th day of July, 1915 this matter coming on to be heard, the following order was entered by the Court:

138 * * * No. 488 * * *

Tuesday, July 27, 1915.

Present: Honorable Kenesaw M. Landis, Judge of said Court.

Upon motion of the defendant, leave is hereby granted said defendant to file interrogatories instanter, the same to be answered by Wm. Wrigley Jr. in fifteen days from this date.

139 And on to-wit: the 27th day of July, A. D. 1915, there was filed in the Clerk's office of said court a certain Interrogatories, in words and figures following to-wit:

140 * * * No. 488 * * *

Interrogatories propounded on behalf of L. P. Larson, Jr. Company, Defendant, to the Wm. Wrigley Jr., Company, and required to be answered by Wm. Wrigley, Jr., President of said plaintiff, all as provided by Equity Rule No. 58.

Interrogatory No. 1. Please state the exact date when the said plaintiff, Wm. Wrigley, Jr., Company, or any predecessor, used, as a trade dress for "Spearmint" gum, an outside wrapper or counterband, of which the predominating colors were red, white and green, and the wrappers for the five individual sticks of gum, held together by the counterband, were pink, with the outside wrapper or counterband shorter than the individual wrappers for the sticks of gum, as set out in said bill of complaint, setting forth in the answer the name of the lithographer or label maker who manufactured said wrappers or labels, both outer and for the 141 individual sticks, and to what concern the first sale or sales were made and the amount of the sale or sales. Filed July 27, 1915.

Interrogatory No. 2. Please state what person is claimed by the said plaintiff to have originated the trade dress for chewing gum referred to in the interrogatory No. 1.

Interrogatory No. 3. Please state whether there was any suit instituted by plaintiff against Frank F. Pulver of Troy and Rochester, New York, or the Digesto Company, for alleged infringement of said trade dress referred to in Interrogatory No. 1, and if so when and where said suit was instituted, how it terminated, and what has become of the records and evidence taken therein.

Interrogatory No. 4. If, in answer to Interrogatory No. 3 above propounded, it shall be answered that suit was instituted by plaintiff against either Frank F. Pulver or the Digesto Company for alleged infringement of said trade dress for gum and evidence was taken therein, please annex copies of the pleadings, decrees and evidence in said case.

Interrogatory No. 5. Did the plaintiff, or any one in its behalf, ever purchase the factory, property or assets of said Frank F. Pulver or Digesto Company, and if so, when and where and for what consideration, stating in this connection fully the terms of said purchase, the assets or property purchased, and the use that has been made of any factory or property so purchased.

Interrogatory No. 6. Please state the exact date that the trade dress for gum, that is, the outer wrapper or counterband and individual wrappers, asserted in the bill of complaint to have been adopted by plaintiff for use upon 142 its "Doublemint" gum, was first used by plaintiff, setting forth fully in the answer the name of the person who claims to have devised the same, the date of the first sale or sales, name of the first concern or concerns to whom the first sale

or sales was made of "Doublemint" gum in said trade dress and the amount sold, annexing copy or copies of the invoice or invoices employed in connection with such first sale or sales.

Interrogatory No. 7. Referring to the charges in the bill of complaint that various dealers, both wholesale and retail, have confused the "Doublemint" gum of plaintiff and the "Wintermint" gum of defendant on account of the similarity of the trade dress or wrappers thereof, please state the names and addresses of such dealers, both wholesale and retail, and the dates of such alleged confusion.

Interrogatory No. 8. Please state what has become of the books, letters, copies of letters, business papers and documents of the said Frank F. Pulver and of the Digesto Company, showing or purporting to show the adoption or use, and time thereof, by said Pulver and said Digesto Company of a trade dress and wrappers, both counterband and individual, for gum similar to the alleged "Spearmint" trade dress of plaintiff referred to in Interrogatory No. 1 hereof, stating in that connection clearly whether such books, papers, documents, etc. or any thereof, came to the possession of the plaintiff upon such purchase by plaintiff of any of the
143 property or assets of said Pulver or Digesto Company, and if so, what has become of the same, and, if not destroyed, producing such thereof as are pertinent as evidence of the adoption or use of such similar trade dress, and the times of such adoption or use by said Pulver or said Digesto Company.

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Note: Answer under oath to the above interrogatories, and each and every thereof, will be required of Wm. Wrigley, Jr., President of the said plaintiff, Wm. Wrigley, Jr. Company.

CHARLES H. ALDRICH
REED & ROGERS
*Solicitors for said defendant*
*L. P. Larson, Jr. Company.*

144 Notice is given to counsel for Plaintiff that application will be made before the Honorable Kenesaw M. Landis, Judge of said Court, on the 27th day of July, A. D. 1915, at 10:00 o'clock A. M. or as soon thereafter as counsel can be heard, for an order allowing the defendant, L. P. Larson, Jr. Company to file the above interrogatories and

requiring the same, and each thereof, to be answered under oath by Wm. Wrigley, Jr., President of said Wm. Wrigley, Jr., Company, on a date to be fixed by the court.

Dated, Chicago, July 21st, A. D. 1915.

CHARLES H. ALDRICH
REED & ROGERS
*Solicitors for said defendant,*
*L. P. Larson, Jr. Company.*

Received a copy of the above notice and interrogatories this 21st day of July, A. D. 1915.

JAMES R. OFFIELD
*Solicitors for said plaintiff,*
*Wm. Wrigley, Jr. Company.*

Filed July 27 1915 J. C. MacMillan Clerk

145 And on to-wit: the 6th day of August, A. D. 1915, there was filed in the Clerk's office of said court a certain Answers To Interrogatories, in words and figures following to-wit: Filed Aug. 6, 1915.

146 * * * No. 488 * * *

ANSWERS TO INTERROGATORIES PROPOUNDED ON BEHALF OF L. P. LARSON JR. CO, DEFENDANT TO WM. WRIGLEY JR. CO COMPLAINANT.

Answer To Interrogatory No. 1. In answer to interrogatory No. 1, the approximate date when the predecessor of Wm. Wrigley Jr. Co., used an outside wrapper or counterband having the predominating colors of red, white and green, was in the spring of 1893; the pink wrapper for the five individual sticks of gum was not generally adopted by the complainant until about the first for the year 1906. The name of the lithographer or labelmaker who first manufactured both the red, white and green counterband and the individual pink labels is Rufus J. Kittredge of Chicago, Illinois. There are no records of the first sale or sales made and the amount of the sale or sales other than the memory of certain parties.

Answer To Interrogatory No. 2. Wm. Wrigley, Jr. originated the trade-dress for chewing gum referred to in Interrogatory No. 1.

Answer To Interrogatory No. 3 Suit was instituted
147 by Wm. Wrigley Jr. & Co., an Illinois corporation, against Digesto Co., F. F. Pulver and C. E. Blauvelt in the Southern District of New York, the Bill having been filed December 19, 1910, The suit terminated in the month of December, 1913 with a final decree being entered in favor of the complainant.

Answer To Interrogatory No. 4. The pleadings and decrees in the aforementioned case are a matter of court record available to the defendant.

Answer To Interrogatory No. 5. The business and good will of the Digesto Company were purchased by the complainant in the year 1913.

Answer To Interrogatory No. 6. The trade-dress for complainant's Doublemint product is substantially the same as the trade-dress of its Spearmint product except as to reversal of colors as clearly appears by a comparison of the two packages. Complainant's Doublemint product was devised by Wm. Wrigley Jr., and the first sale made on or about July 28, 1914; the first shipment being made to B. L. Atwater of New York. Copies of invoices representing first shipments upon July 28 and August 31, 1914 are hereto attached.

Answer To Interrogatory No. 7. The names and addresses of the parties where confusion has taken place between complainant's and defendant's products cannot be given at this time.

WM. WRIGLEY JR.

Subscribed and sworn to before me this 6th day of August, 1915.

SADIE M. RYAN.
(Seal) *Notary Public.*

Filed Aug 6, 1915 J. C. MacMillan

148 EXHIBIT I

Follows here, no copy.

149 EXHIBIT II

Follows here, no copy.

(Endorsed) Filed Aug 6, 1915 J. C. MacMillan, Clerk

150 And on to-wit: the 6th day of August, A. D. 1915, there was filed in the Clerk's office of said court a certain Objections To Interrogatories, in words and figures following to-wit: Filed Aug. 6, 1915.

151 * * * No. 488 * * *

OBJECTIONS TO INTERROGATORIES PROPOUNDED ON BEHALF OF L. P. LARSON JR. CO., DEFENDANT TO WM. WRIGLEY JR. CO., COMPLAINANT.

Interrogatory No. 3. Complainant objects to answering that portion of Interrogatory No. 3 which reads as follows: "and what has become of the records and evidence taken therein". The grounds for the objection are that the records and evidence taken in that case, if any, are irrelevant and immaterial to any issue in this cause and not material to the defense of said cause.

Interrogatory No. 4. Complainant objects to answering that portion of Interrogatory No. 4 which reads as follows: "Please annex copies of the pleadings, decrees and evidence in said case. The grounds for objection are as follows. Copies of the pleadings and decrees in said case are a matter of public record and may as easily be procured by the defendant as by the complainant. The evidence in said case, if any, is immaterial to any issue in this case; is not material to the defense of this case and cannot be used as evidence in this case.

Interrogatory No. 5. Complainant objects to answer-
152 ing that portion of Interrogatory No. 5 which reads as follows: "and if so when and where and for what consideration, stating in this connection fully the terms of said purchase, the assets or property purchased and the use that has been made of any factory or property so purchased." The grounds for objection are as follows: The information asked is irrelevant and immaterial to any issue in this cause and is not material to the defense of the cause.

Interrogatory No. 8. Complainant objects to answering interrogatory No. 8: the grounds for objection being that the information called for in the interrogatory is immaterial to any issue in this cause and is not material to the defense of the cause.

JAMES R. OFFIELD
*Solicitor and of Counsel for Complainant.*

Endorsed Filed August 6, 1915.

(Endorsed) Filed Aug. 6, 1915. T. C. MacMillan, Clerk

Entered Nov. 15, 1915.

153 And afterwards on, to wit, the 15th day of November, 1915 this matter coming on to be heard, the following order was entered by the Court:

154 * * * No. 488 * * *

Monday, November 15, 1915.

Present:

Honorable George A. Carpenter, Judge of said Court:

Upon motion of the defendant, it is ordered by the court that the objections to interrogatories, heretofore filed herein, and for rule to answer be and the same are hereby set for hearing on November 22nd.

155 And afterwards on, to wit, the 30th day of December, 1915, this matter coming on to be heard, the following order was entered by the Court:

156 * * * No. 488 * * *

Thursday, December 30th, 1915.

Present:

Hon. George A. Carpenter, Judge of said Court:

This cause having heretofore come on to be heard upon the objections of the plaintiff to certain of the defendants interrogatories, and the court having considered and being fully advised in the premises, it is Ordered that the plaintiffs objections to defendants interrogatories numbered 3, 4, 5 and 8 and parts thereof be and the same are hereby overruled, and the plaintiff is hereby ruled to answer said interrogatories in twenty days.

157 And afterwards on, to wit, the 3rd day of January, 1917 this matter coming on to be heard, the following order was entered by the Court:

158 * * * No. 30,563 * * *

Wednesday, January 3, 1917. Entered Jan. 3, 1917.

Present:

Honorable Albert B. Anderson, Judge of said Court:

It is ordered by the court that the above entitled cause be set for final hearing on February 5, 1917.

159 And on to-wit: the 17th day of January, A. D. 1916, there was filed in the Clerk's office of said court a certain Answers To Interrogatories, in words and figures following to-wit: Filed Jan. 17, 1916.

160 * * * No. 488 * * *

ANSWERS TO INTERROGATORIES PROPOUNDED ON BEHALF OF L. P. LARSON, JR. COMPANY, DEFENDANT TO WM. WRIGLEY JR. COMPANY, COMPLAINANT.

Further answering Interrogatory No. 3, complainant states that the evidence taken in the suit referred to in said interrogatory is in possession of complainant's counsel, James R. Offield, together with all records.

Further answering Interrogatory No. 4, complainant states that the pleadings, decree and evidence in said case may be examined in the office of complainant's counsel.

Further answering Interrogatory No. 5 complainant states that complainant purchased the assets of the Di-Gesto Company for a valuable consideration; that the factory of said company at Rochester, N. Y. was dismantled and that the machinery, fixtures, stock and general equipment of said factory was brought to Chicago and part of the same has been used in the business of complainant. Complainant further states that some of the office and factory equipment was sold at Rochester, N. Y. such as paper. small electric motors and some office fixtures.

Further answering Interrogatory No. 8 complainant states that it has no books, letters, business papers or docu-
161 ments of the said Frank F. Pulver, or the Di-Gesto Company, other than the Exhibits referred to in the evidence

taken, and that such Exhibits will be produced for the inspection of defendant's attorney and at the office of complainant's counsel.

J. C. Cox.
*Treas.*

Subscribed and sworn to before me this 15th day of January, 1916.

Sadie M. Ryan
(Seal) *Notary Public.*

Complainant states that the reason these answers are not answered by Wm. Wrigley, Jr. personally is that Mr. Wrigley is out of the City and will not be back for several months.

Filed Jan. 17, 1916. T. C. MacMillan, Clerk.

Filed Jan. 27, 1916.

162 And on to-wit: the 27th day of January, A. D. 1916, there was filed in the Clerk's office of said court a certain Stipulation and Answer to Defendant's Counterclaim in words and figures following to-wit:

163 * * * No. 488 * * *

STIPULATION:

It Is Hereby Stipulated And Agreed between counsel for the respective parties that the complainant may have until January 27th in which to file an Answer to the counter-claim set up in the Answer of the Defendant, and that when said Answer is so filed it will have the same force and effect as if filed within the time set forth in Equity Rule 31.

James R. Offield
*Solicitor for Complainant*
Charles H. Aldrich & Frank F. Reed
*Solicitors for Defendant.*

Chicago, Ill.
January 15th, 1916.

164 * * * No. 488 * * *

## ANSWER TO DEFENDANT'S COUNTER-CLAIM.

Filed Jan. 27, 1916.

Complainant answering the counter-claim set forth in Paragraphs 8 and 9 of defendant's Answer, says:

I.

This complainant denies that the public has been misled and injured by the conduct of the complainant herein, or that confusion has resulted in the trade between complainant's "Doublemint" package and defendant's "Wintermint" package by reason of such similarity in colors as may exist between said packages. Complainant denies that any profits which may have rightfully belonged to the defendant have reverted to the complainant and that the defendant has been injured to any extent whatsoever.

Complainant denies that it has ever sought to or succeeded in palming off its "Doublemint" product for the goods of the defendant, of that said complainant has ever made any false, fraudulent or misleading representations to the trade, to this Court, or to any other party regarding the origin of its trade-dress, form of package and color scheme of its "Doublemint" or "Spearmint" product.

Complainant avers that prior to the year 1913 Zeno Manufacturing Co., one of the predecessors of the complainant, used green as the color for the paper wrapper for the individual sticks of gum and that paper of such color has long
165 been used by various chewing-gum manufacturers long prior to the year 1913, namely,

Zeno Manufacturing Co. of Chicago, Ill., at Chicago, Ill.

American Chicle Co. of New York, N. Y. at New York, N. Y.

The Grove Company of Salem, O., at Salem, O.

Frank F. Pulver and H. H. Pulver of Rochester, N. Y. at Rochester, N. Y.

Complainant denies that defendant's "Wintermint" product ever met with any extensive sale throughout the United States and complainant avers that at the time it placed its "Doublemint" Product upon the market it was not aware of defendant's "Wintermint" product being upon the market, and therefore complainant's "Doublemint" product was not placed upon the market with the design of injuring and destroying the business of the defendant; this complainant

further denies that any confusion in the trade has resulted as between said "Doublemint" and "Wintermint" products; denies that it has copied any brand of gum of another manufacturer as to color scheme, trade-dress and general appearance; denies that complainant has caused purported decrees to be entered in any proceeding, at law or in equity, for the purpose of establishing priority and rights of the complainant which were not justifiable.

Complainant denies generally and specifically the allegations set forth in paragraph 8 of the Bill of Complaint as to any and all transactions between the Di-Gesto Company and F. F. Pulver and either of them with the said complainant, but admits the bringing of two suits, one against the Di-Gesto Company and the other against Frank F. Pulver, one in the Southern District of New York, and the other in the Western District of New York; admits the taking of 166 testimony, but denies that the said Pulver established clearly a priority of use of the said trade dress, color scheme, etc.; denies that any term or condition of purchase by the complainant of the said Di-Gesto Company was that the said Pulver should keep secret the said settlement and should, by himself and his agents, refrain from advising others of the true history of the "Spearmint" package.

II

This complainant denies that it has done any act contrary to equity and good conscience, or which constitutes a fraudulent invasion and infringement of defendant, counter-claimant's rights.

Wherefore, this complainant having fully answered said counter-claim in so far as it is advised the same is material and necessary to be answered unto, denies that the said defendant counter-claimant is entitled to the relief or any part thereof in its said Answer and counter-claim demanded, or any relief whatsoever, and prays that the said counter-claim be dismissed and that the complainant recover its reasonable costs herein.

WM. WRIGLEY JR. COMPANY
By JAMES R. OFFIELD

JAMES R. OFFIELD *Of Counsel*
*Solicitor and of Counsel for Complainant.*

Endorsed Filed January 27, 1916

(Endorsed) Filed Jan. 27, 1916. T. C. MacMillan, Clerk

167 And afterwards on, to wit, the 7th day of February, 1917 this matter coming on to be heard, the following order was entered by the Court: Entered Feb. 7, 1917.

168 * * * No. 488 * * *

Wednesday, February 7, 1917.

Present: Hon. Albert B. Anderson, Judge of said Court:

Upon motion of the plaintiff, the defendant consenting in open court, it is ordered by the court that this cause be and the same is hereby set for final hearing on March 12, 1917.

169 And afterwards on, to wit, the 12th day of March, 1917 this matter coming on to be heard, the following order was entered by the Court: Entered Mar. 12, 1917.

170 * * * Nos. 30,563 and 488 * * *

Monday, March 12, 1917

Present: Honorable Albert B. Anderson, Judge of said Court:

Now come the parties by their respective solicitors and now this cause comes on for trial. By agreement of the respective parties hereto, in open court, it is ordered by the court that the above entitled causes be consolidated for trial. Thereupon statements of counsel and evidence on behalf of the plaintiff is heard and the further trial of this cause is postponed until tomorrow morning.

171 And afterwards on, to wit, the 13th day of March, 1917 this matter coming on to be heard, the following order was entered by the Court: Entered Mar. 13, 1917.

172 * * * Nos. 30,563 and 488 * * *

Tuesday, March 13, 1917

Present: Hon. Albert B. Anderson, Judge of said Court:

Now again come the parties by their respective solicitors and the trial of this cause is resumed. After hearing further

evidence on behalf of the plaintiff and evidence on behalf of the defendant in part, the further trial of this cause is postponed until tomorrow morning.

Filed Jan. 7, 1925.

837 And on to-wit: the 7th day of January, A. D. 1925, there was filed in the Clerk's office of said court a certain Testimony, Vol. 1, taken before Judge Anderson, a copy of which is in words and figures following to-wit:

837a * * * Nos. 30,563 and 488 * * *

Be It Remembered, That heretofore, to-wit, on the 12th day of March, 1917, at 10:00 o'clock A. M. the above entitled causes came on for hearing before Honorable Albert B. Anderson, one of the Judges of said Court.

Present:

Mr. James R. Offield, representing Complainants;

Mr. Charles H. Aldrich and Mr. Frank F. Reed, representing the defendants.

838 Mr. Offield: May it please the Court: In these two cases in equity 30,563 and 488, counsel for the respective parties have agreed, with the permission of the Court, that the cases may be consolidated and the evidence taken apply to both cases so as to save the time of taking evidence in each case, they are very closely related.

In 30,563 the complainant in William Wrigley, Jr. Company, manufacturers of chewing gum, a West Virginia corporation; the defendants are L. P. Larson, Jr. Company and L. P. Larson, Jr., the former being a corporation of the State of Illinois, and the latter defendant its president.

In October, 1911, the William Wrigley, Jr. Company filed its bill of complaint against the L. P. Larson, Jr. Company for the infringement of its trade dress. A motion for a preliminary injunction was made on the 6th of November, the hearing was on the 8th, and Judge Carpenter granted the motion for a preliminary injunction. That is the package that was before that court. There is only one package left in complainant's original exhibit. There is the Wrigley box and the Wrigley package, and this is the defendants' box and the defendants' package. (Handing articles to the Court.)

After the granting of the preliminary injunction the matter rested for a little over two years, and in 1914 the original counsel in the case withdrew and Mr. Charles H. Aldrich and Mr. Reed, of Reed and Rogers filed their appearance
839 as attorneys for the defendant.

Now, the bill of complaint in that case makes the usual allegations as to the parties, makes the allegation that the label of complainant's package, the word Spearmint, was first used by them, by William Wrigley, Jr. & Company, the predecessor of the present complainant, in the year 1894. It makes the allegations that in the year 1906 an advertising campaign was started on Spearmint gum and that up to about the time this suit was brought more than ten millions of dollars had been expended in the advertising of the chewing gum products and largely advertising the Spearmint product of the William Wrigley, Jr. Company.

Now, so much as to the first case, that gives your Honor a better review of the issues—

The Court: This is the plaintiff's and this is the defendants' (indicating)?

Mr. Offield: That is the defendants'.

The Court: You claim this is an infringement of that?

Mr. Offield: Yes.

The Court: Now, Judge Carpenter so held?

Mr. Offield: Oh, yes, Judge Carpenter held on the preliminary motion,—issued the preliminary injunction on the similarity of the packages and cartons, granted an injunction on both. Mr. Clerk, isn't there a package of Doublemint
840 among those exhibits in 488?

The Clerk: I have given you all the packages I had.

Mr. Offield: I don't see it. I have sent over for another package. I will have it here any moment.

Now, in Equity suit No. 488, the bill of complaint was filed in June, 1915. At that time just shortly prior to the filing of the bill there was called to the attention of the Wrigley Company a package of gum in this form of carton and form of package (handing articles to the Court.) The bill was filed in June, 1915. In August of 1914 the complainant adopted a package very closely related to their Spearmint package for the Doublemint gum, desiring to put out a peppermint flavored gum at that time, and in getting up that package they made practically a reversal of the colors of their Spearmint package. I will have one of those Doublemint packages here in a moment. My exhibit has gone from the Clerk's office,

apparently. They put their Doublemint package out on the market in July of 1914. In 1915 the Larson package came to the attention of the William Wrigley, Jr. Company, and after a discussion as to the appearance of that package it was the opinion of one of the officers of the William Wrigley, Jr. Company that it was an unfair package, that it was a simulation of the Wrigley Spearmint package that had previously been enjoined, and that it was,—well, your Honor
841 has a box of that, and it also was a simulation in a way, of the Doublemint package which the Wrigley Company had placed upon the market in July of 1914.

The answer in that suit sets up that the Larson package which we complained of in that bill of complaint was on the market, of course, long subsequent to our Spearment package, but was prior to our Doublemint package upon the market. And they set up a counter claim in their answer that this being on the market prior to our Doublemint package they alleged infringement of this package by our Doublemint package.

The Court: What is this?

Mr. Offield: That is their package, you have a box of the Larson, that is the Wintermint. I have no package of the Doublemint for the moment, that is apparently lost, but I will have a fresh box of it.

So the issues in the two cases are largely the same, this question of the adoption and use of the Spearment package enters into both cases because it is alleged in the bill of complaint in both cases that there is an infringement of the Spearmint package, so the testimony that will be taken as relates primarily to the first case only has a direct bearing upon the allegations of the bill in the second case. And the additional testimony of very short duration will be taken as to the Doublemint gum.

842 Now, a little history of what has been done in this field before this suit was brought: As I stated, in 1906 William Wrigley, Jr. Company decided to advertise extensively their Spearment product. They started in the latter part of that year with a great advertising campaign. As usual in every advertised product, they had not been upon the market only a short time when there appeared in the New York market a package made by the Grove Company, of Salem, Ohio. Suit was brought in the United States District Court at New York, Second Circuit, and after a hearing before his Honor, Judge Hough, Judge Hough decided that the Grove

package was a direct infringment of the Wrigley Spearmint package; and also decided by reason of the long use that the Wrigley Company had made of the word Spearmint and the immense amount of money that had been spent in advertising that there had sprung up a secondary meaning to that word. And Judge Hough held that they had the right to the word Spearmint in addition to the unfair appearance of the package; they had the right to the word Spearmint as the predominating sign or mark upon the label of a package of chewing gum.

That case went to the Court of Appeals for the Second Circuit, and the Court of Appeals reversed Judge Hough as to the Wrigley Company having the right to the word Spearmint broadly as applied to the face of the package, on the ground that it was a well known oil, oil of the spearmint
843 plant, it was purely descriptive and as such there could be no exclusive use.

While that suit was pending, it may have been shortly before that suit was brought, the Wrigley Company filed an application for the word Spearmint under the ten year proviso of the trademark law, alleging the use of that word since 1893 or 1894, continuous use. That application was allowed and placed for publication in the Patent Office, and a notice of opposition was filed by one Duane Norris of Chicago. Considerable testimony was taken in that opposition proceeding, and one Russell Hough testified that in the year 1896, I believe, for a very limited time and upon a very small amount of chewing gum, he used the word Spearmint, and produced a label with a hand holding a shaft with the word Spearmint upon that label. And in view of that disclosure the Circuit Court of Appeals for the District of Columbia held with the Commissioner that the opposition in the Duane Norris case should be sustained, so that the trademark was never registered. But since that time we have gone through, as I say, the Salem, Ohio, case, the Grove Company, one of the oldest manufacturers in the United States, of chewing gum, The case was very hard fought on both sides, a great many witnesses were examined and the company was handicapped in their effort to prove the prior adoption of this package
844 by some one else, and in view of all that testimony taken, as I say, the Court of Appeals held that the Grove package and their yellow package was an infringement of the Wrigley package and carton. In connection with the suit,

there was an affidavit filed showing the records of the Grove case and the character of the packages before the Court.

Now, after that Grove decision, there sprung up in the East, in Rochester, New York, a concern by the name of the Di-Gesto Company. There were several companies there, the Compton Gum Company, the Adams Company, the Di-Gesto Company, the Continental Vending Sales Company, and on tracing those companies to their source it was discovered there was one man, Frank Pulver, behind all those different corporations or companies.

The Court: Named Pulver?

Mr. Offield: Frank F. Pulver. After sifting this situation down, we found that Pulver was at the bottom of the whole situation, and suit was thereupon started against the Di-Gesto Company, Frank F. Pulver, Charles E. Blauvelt and a corporation known as the Continental Vending Company. Two suits were started in the District Court of New York. Those suits went so far as the taking of some testimony. The complainants put in their prima facie case, the defendants put in most of their proof, and before thie Larson case, or after
845 the decision in the Larson case on the injunction motion that Pulver case was settled. The Pulver Company and all these allied companies, two or three corporations and Pulver's business as an individual and the Di-Gesto Company's business as a co-partnership of some character, were all purchased by the Wrigley Company. Pulver's proof attempted to show in that case that he was making a label somewhat similar to the Wrigley label prior to the Wrigley use.

The defense in this case largely rests on the theory that the purchase of the Pulver Company by the Wrigley Company acknowledges that the Wrigley Company were subsidiary in the field with this label to Pulver, and that having been in the field after Pulver we come into this court and allege our sole adoption and that early use of this Spearmint label after we spent our millions of dollars on it, and that coming in here and making those allegations after the purchase of the Pulver Company we are in this court with unclean hands.

My theory of the case is, of course, that the purchase of the Pulver Company has nothing to do with whether Pulver used this label before the Wrigley Company or after, it was a plain, straight business proposition and the early adoption and use by the Pulver Company cannot be established by that purchase or sale.

846 I have given you the facts fully because I want your Honor to get the whole lay-out in the main case here,

the first case. Now, I think I have stated the situation fairly. The issues are very simple and I will leave it now for my adversary to make any corrections in any statements I have made as to the general issue.

Mr. Aldrich: May it please the Court: As has been stated, this first case was commenced in October, 1911, and Judge Carpenter gave a preliminary injunction in the case as between the two packages. In 1914 we applied to the Court, I came into the case at that time, associated with Mr. Reed, and we asked the Court for leave to file an amended answer, which was granted to us, and also for leave to take testimony. And by the amended answer we set up that William Wrigley & Company were not the originators of the package upon which they brought their suit, but that they had copied that package as they had likewise copied the packages of every other successful gum that has been offered for sale by other gum manufacturers in the United States. We gave the instances in which they had done it, including the Pulver package, and we got leave to take testimony, and took testimony to sustain the issues upon that subject. And we shall submit to you as to that first case that it has been proven so clearly that there is no reasonable doubt that aside from the Spear
847 which William Wrigley registered as his trade mark in April, 1907, he has never originated anything with reference to that package or any other.

Having put in that answer and taken some testimony upon that subject, being yet engaged in the taking of testimony, they brought the suit upon the Doublemint and against the Wintermint package, and in their bill they again repeated that history of the Spearmint package. That history as they have it in both bills, if the Court please, dates from 1894, as they say that they commenced to manufacture Spearmint gum in 1894. That is the averment of both bills. And they state in the second bill, namely, the Doublemint bill No. 488, that they designed a new package, this Doublemint package, which is this package (handing package to the Court), in July, 1914; July 27th is the date of the earliest use or conception of that package. They say that in designing that package they desired to get up a package that was easily distinguishable from their Spearmint package and at the same time would indicate that it came from the same source, they put the double-headed spear on instead of one spear. And they say that the defendant, desiring to filch the trade that they had in Doublemint, had subsequently to that time put out this Win-

termint package which they say is an infringement of their package (handing a package to the Court.)

848 Now, if the Court please, the facts with reference to the Doublemint and the Wintermint packages are these: As I have stated, they gave their earliest use as July 27, 1914. In November and December, 1913, the Larson Company conceived and commenced the use of the Wintermint package. They had ordered some millions of labels during January and February of 1914, more than six months before the Doublemint package was conceived even as stated by the complainant in his bill; they had sold it in practically every state of the Union prior to June 27, the date of their earliest conception; they had applied for registration on the 3d of February, 1914; it had been allowed in May, 1914, and the certificate of final registration had been made on June 21, 1914, six days before they had conceived the package, as they themselves stated.

In taking depositions to show that the Wrigley Company didn't come into court with clean hands, and to bring the case squarely within the decisions of the Supreme Court of the United States, as well as many decisions of the Circuit Courts, we, in connection with the last case, filed an answer setting up these facts and also the counter-claim that they had never originated the Spearmint package and that they were, therefore, not entitled, to come into a court of equity with clean hands, and we filed interrogatories directed to

859 the proof of the existence of the prior Pulver package.

The fact was, they had taken their testimony in that case and it was ready for final hearing, and we asked them—that testimony had not been filed, if the Court please, and as this record will show as we adduce our proof had not been filed in the court as under the statutes of the United States it must be when it is taken, but it had been withheld by the parties and we asked them about what had become of the testimony, where it was, why it was not on file in the Federal courts, either at Buffalo, the Western District, or in the Southern District of New York, because this same suit had been brought in each district, although the testimony had been taken in the Southern District. We asked them when the Pulver settlement took place. We asked them how much was paid, and so forth, and they made objections, as this record will show, to the answering of any of those questions, and Judge Carpenter compelled their answer. They answered a part of them and we had to apply to the Court for a further answer, and

they were again compelled, and they were finally required to produce the testimony that had been taken in the case pending in the Western and Southern Districts of New York. And it finally developed they were compelled to produce the agreements of settlement, and it developed that they had paid the sum of $250,000 in settlement of the Pulver case. We
850 shall contend, if the Court please, both by the facts as to Pulver's prior use and also by the fact of that settlement and that payment and the provisions of the agreements with reference to Mr. Pulver not giving aid or abetting anybody that questioned the Wrigley prior use of this label, and so forth, that it is an admission that they are not the originators of the package upon which both of these suits are primarily founded.

The evidence will show, if the Court please, that Mr. Pulver commenced to manufacture Spearmint gum, using the word Spearmint in 1889. He was then employed by the Elgin Watch factory at Elgin, Illinois. For two years he continued to make gum in a small way while employed by that factory, until a day came when he was notified by his employers that he couldn't serve two masters, he either had to drop the gum business or drop out from the watch factory. He adhered to his gum business and removed to Troy, New York, and there he manufactured a package (showing article to the Court) in every way the counterpart of that, except that it was Pulver instead of the Digesto there, and the color was the same as it is now, and the location of his business was indicated as it then was at Troy, New York. He left Elgin and went to Troy and there manufactured gum for a number of years, when he removed to Rochester, New York, and there, in 1901, ten years after his first manufacture in New York, he changed
851 from the Pulver name to the Digesto. He and his brother, Henry Pulver, were together in not only making and manufacturing gum but also in selling a gum vending machine, and at this later date there was a division and Henry Pulver took the gum vending and Frank Pulver took this other business, and he called it the Digesto Company from that time on. So that the fact that Pulver with that trade dress antedated the Wrigley trade dress will be met, I think, and I want to state now moderately, if the Court please, made so clear that there can be no room for doubt on that subject. If that be so, the decisions are abundant that the complainant is not entitled to recover, is not entitled to appeal to a court of equity at all. The Supreme Court has spoken upon that subject very recently in the 226 United States.

Now, back of all that, if the Court please, lies another fact that will be clearly established by our evidence in this case, and that is that William Wrigley did not commence the manufacture of Spearmint gum in 1892 or 1893 or 1894. And I find that in our answer we say something about 1895, it is the stenographer's mistake, it should be 1905. He never made any Spearmint gum, as I think the evidence will show, until subsequent to 1900, six years later than by the terms of his bill he has invoked this case and in the Pulver case sought to establish.

852 The evidence will also show that he applied for his first registration, which included, in the papers as he presented them in the office at Washington, both the Spear, as it appears on his package, and the word Spearmint. In that application he dated his first use up to the year 1900, if the Court please. The word Spearmint was rejected as descriptive and not a name that could be monopolized by anybody. Here was shown, as the evidence will show, just the Spear, without anything on it, just the spear head. Later in that same year 1907 a second thought, a later thought occurred to them, and they thought they could come in under the copyright act, or registration act by the ten year use, and so they applied for the word Spearmint in a separate application in August on that year, and they went back then to 1894 or 1892 in some of their testimony.

The manufacturer here by the name of Duane Norris intervened and made objections to the registration; the Commissioner rejected it, and the Court of Appeals in the District of Columbia affirmed such rejection.

So that we will have here, if the Court please, our evidence will be directed to three points. I shall seek to show that those packages are not infringing; secondly, that the complainant company did not originate this dress, did not use it until

853 subsequent to 1900; they made an experimental batch in 1902. It was not a success, it was a very small amount, and they discontinued making it until 1906, in the late autumn of 1906 they commenced an advertising campaign first in Buffalo, New York, then at Rochester, going down into the home of Pulver; and then they extended that. This was in Buffalo and Rochester in the beginning of 1907, and they extended it to Greater New York in November, 1907. And it will be shown here that the man who was installed as the manager of the Wrigley Company's interests in Greater New York, and has continued to be the manager from that time to

this, himself testified in this case that he had never heard of Wrigley's Spearmint gum until 1907.

I have omitted to state one thing that will be, as we deem, material, and which will show that after they had purchased from Pulver and had thus become the owners of both sides of the litigation, they entered a decree, both in the Southern District of New York and in the Western District of New York, which made them the victors, and recited in the body of the decree that Mr. Pulver had paid them the damages arising out of his infringement. I do not need to comment in this court upon the effect of decrees entered when one side owns both sides of the litigation.

We will go further, if the Court please, with reference to our proof of the Wintermint package, where, as I have stated,
the proof and the facts will show that we commenced in
854 December to sell, 1913, had had our registration granted
and allowed before their earliest date was conceived. We will show that prior to the time of their earliest date, June 27, 1914, it came to the knowledge of Mr. Larson, of the L. P. Larson, Jr. Company, that they were contemplating an infringement of his package, and that he addressed a letter to the William Wrigley, Jr., Company, warning them against so doing. That he was requested to furnish the registered labels against which his warning was directed, and that he furnished them with both the Peptomint and Wintermint labels, and that notwithstanding that they came out with this Doublemint label.

Now they say that our Wintermint label infringes their Doublemint label. It will take considerable casuistry to say that if we are prior in point of time and have the prior rights, and to deny that their Doublemint label does not infringe our Wintermint label.

We have accepted their suggestion upon that subject and we therefore, if the Court please, deny that the complainant has any right to recover here on either one of these packages, or that he is in a position to appeal for the aid of a court of equity.

Mr. Offield: I just want to correct, or rather, state in my own way, your Honor, one or two points here that have arisen
in Mr. Aldrich's statement.
855 In the first place, the testimony that was taken in that
Pulver case didn't place the case in condition for final hearing. The prima facie case was taken on the part of the Wrigley Company, and even Mr. Pulver's case I do not be-

lieve was completely closed. The Wrigley Company had taken no rebuttal testimony whatsoever, to contradict hundreds and hundreds of errors in their testimony.

Secondly, the bill of complaint in the second suit here is not based solely on this question of the Doublemint package. If that were the fact there could have been no necessity even of mentioning the Spearmint package, in view of what this man Larson had done, in view of the fact that this Wintermint package had only been called to the attention of the Wrigley Company a few days before this bill of complaint was filed. That package was to be considered and was considered as an unfair package as to the Wrigley Spearmint and the Wrigley Doublemint, not that whether it was after the Doublemint or not. The bill charges alleged infringement of the Wrigley Spearmint or Doublemint. It is one of those unfair things where you skin in as close as you can between a man's rights,—skin in as close as he could to the Spearmint package.

Now we have the right, on the Spearmint package to the reversal of colors. One might conclude that the Court of Appeals for the Second Circuit had practically said it
856 included,—the label was a reversal of colors. Our only scheme in designing Doublemint package was to get a package that lay along parallel with the Spearmint package. You may see how the scheme was founded, it is doublemint, it is double strength, it is double spear, it is double wrapped; it has all the characteristics of the Wrigley Spearmint package except one, in the reversal of colors and the extra spear head. So that if your Honor will find a similarity between the Wintermint package and the two packages of the Wrigley Company, it is between the Spearmint and not between the Doublemint and the Wintermint.

Now as to Judge Carpenter compelling company to answer as to the testimony and as to the agreements in that other case: Their interrogatories asked for all original papers. I, of course, could furnish some, but I couldn't furnish others, and in the hearing on those interrogatories before Judge Carpenter, Judge Carpenter said, "Why let them have the copies, I think they are entitled to the copies in order that they may see whether or not it is worth while to go east to take the testimony." In pursuance of that order I gave them copies of every scrap of testimony I had in the whole case, and every article of agreement as to the Pulver controversy I let them have everything, they have had the benefit of it for

some weeks. No case has been presented from Mr. Aldrich's side on Mr. Pulver's testimony. The answer to that is
857 why let us see what Mr. Pulver says in his testimony, and not proceed with this case on the theory that Mr. Pulver said everything that Mr. Aldrich stated.

As to the registrations, Mr. Wrigley had never had any experience in registering trademarks, In 1907 when his first application was filed I remember very distinctly asking him when he had used the mark. The application says since 1900, and he says, "Oh, I don't know." I says, "Have you used it since 1900," 1900 being just as good a date as any other date as far as the purpose of the application were concerned. He said yes, so I put it 1900 in the application. Now the minute it was ascertained, and I knew what the facts were in this case, that second trademark application was prepared, carrying this date back to 1894 for the exclusive use.

Now as to the one last point, as to what they expect to prove as to Mr. Atwater, They say Wrigley's man was in New York and never heard of Spearmint until 1907, Wrigley's man was never down there at this time. Mr. Atwater, to whom they refer, was the local manager of the Zeno Company in 1907 and went into the gum business for the first time.

Now, with that statement, I think we are ready to proceed with the proofs.

Mr. Aldrich: If the Court please, I suggest perhaps there should be a formal order consolidating the two cases.

The Court: Yes, I should think so.

858 Mr. Offield: Do you want me to prove these boxes?

Mr. Aldrich: I think we will admit those boxes. I don't want to be technical about anything that is true.

Mr. Offield: The boxes of Larson's Peptomint, in 30563 are admitted.

859 WILLIAM WRIGLEY, JR., called as a witness on behalf of the complainants, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Offield.*

Q. State your name, age, residence and occupation.

A. William Wrigley, Jr. Manufacturer of chewing gum; residence, 2466 Lakeview Avenue, Chicago; age, fifty-five.

Q. How long have you been in the chewing gum business?
A. Since 1892.
The Court: How old did you say you were?
A. Fifty-five. Born in the rebellion.
Mr. Offield: Q. Where did you first start business in the city of Chicago?
A. 157 East Kinzie Street.
Q. In what year was that?
A. 1891.
Q. What business were you in at that time?
A. Soap business.
Q. How long did you remain in the soap business?
A. Only a few months.
Q. Then what business did you go into?
A. Chewing gum.
Q. Did you make the chewing gum that you sold?
A. The chewing gum was made by the Rubber Plant Company.
Q. Where was that concern located?
860 A. On Boston Avenue at that time.
Q. Chicago?
A. Chicago.
Q. Now how long did you remain at 157 East Kinzie street, Chicago?
A. The later part of 1894, I think.
Q. And from 1892 to 1894 at the address on Kinzie street you were engaged in the manufacture of chewing gum solely, or in the sale of chewing gum solely?
A. We sold some soap too.
Q. Now from 1894 on where was your place of business?
A. At 85 Kinzie street, where we were burned out, then we moved temporarily on to Michigan street, and now we are back at 115 Kinzie street.
Q. In what year did you move back to 115 Kinzie street?
A. I think it was 1896.
Q. And how long were you at that address?
A. Until 1902.
Q. Where did you move to in 1902?
A. 88 and 90 Michigan Avenue.
Q. How long were you at that address?
A. Ten years.
Q. And all that time were you engaged in the sale of chewing gum?
A. Exclusively there.

Q. And from 88 Michigan avenue where did your company move to?

A. The office was moved to number 5 North Wabash Avenue, the twelfth and thirteenth floors of the Kesner 861 Building.

Q. Have you a manufacturing plant in Chicago, if so, where?

A. On Ashland Avenue from 35th to 36th Streets.

Q. During the year 1892 what was the name of your concern?

A. William Wrigley, Jr. & Company.

Q. Was it a corporation or copartnership?

A. Copartnership.

Q. Who were the copartners?

A. Myself and my cousin, William Scatchard.

Q. And how long did that copartnership continue to exist?

A. Until 1898.

Q. What happened 1898?

A. I bought Mr. Scatchard's interest.

Q. And did you continue doing business under the name of William Wrigley Jr. & Company from 1898?

A. William Wrigley Jr. & Company.

Q. As an individual?

A. As an individual, yes.

Q. Was William Wrigley Jr. & Company ever incorporated, and if so, when?

A. In 1904.

Q. Under the laws of what state?

A. Illinois.

Q. And how long did William Wrigley Jr. & Company continue to exist?

A. The corporation?

Q. Thw corporation?

A. Until 1910.

Q. And what occurred in that year?

A. We increased the capital of the company and 862 changed it to William Wrigley Jr. Company.

Q. Under the laws of what state?

A. Beginning in January 1st, 1911.

Q. Under the laws of what state was William Wrigley Jr. Company incorporated?

A. Under the laws of West Virginia.

Q. And did you transfer all of the business of the copartnership William Wrigley Jr. & Company, including the

good will, trademarks, and so forth, to the Illinois corporation, William Wrigley Jr. & Company?

A. We did.

863 Q. Was all the property of William Wrigley Jr. & Company, the Illinois corporation, including trade marks and so forth, assigned to the West Virginia corporation, William Wrigley, Jr. Company?

A. It was.

Q. What brands of chewing gum was the co-partnership William Wrigley, Jr. & Company selling in the year 1892?

A. Lotta, Vassar, Youcanchew and Pepsin gum.

Q. And were these brands of gum all sold, also sold, in the year 1893?

A. With the exception of Lotta. The brand died out.

Q. Did you add any new brands to your list in 1893?

A. In the latter part of 1893 we conceived the Spearmint brand.

Q. When did you first put a Spearmint brand of chewing gum on the market?

A. At the beginning of 1904-1894.

Q. What was the label appearance of the package that you wrapped your Spearmint gum in at that time?

A. Very similar to the one that is used today.

Q. What kind of a counterband did it have?

A. The white counterband with word "Wrigley's" in red, the spear in green, and on the left hand of the face of the counterband a mint leaf, a sprig of mint, and the words "New Flavor" on the right hand side.

864 Q. And how were the individual sticks of gum wrapped in your 1893 package?

A. They were wrapped together in foil, five in a package, and surrounded by the counterband.

Q. I show you a package of chewing gum and will ask you to state if that is the package both as to label and the manner of wrapping the five sticks of gum that was used by the William Wrigley, Jr. Company in the year 1893.

A. That is the original package; foil and all.

Mr. Offield: I would like to offer that package in evidence and mark it Complainant's Exhibit No. 1.

Q. Now, for how long a period did William Wrigley, Jr., & Company continue to market Spearmint chewing gum with the label as evidenced by Complainant's Exhibit No. 1?

A. That label I just—Ever since.

Q. And at what time was the method of wrapping the in-

dividual sticks of gum changed from the tin foil to some other method?

A. It was changed to single sticks in the latter part of 1906, but we still continued the foil. We had two styles.

Q. Will you please state the circumstances, if you can recollect, under which the manufacture and sale of a Spearmint gum was conceived by you?

865 A. Well, I have always been a great lover of spearmint, and it had always been my ambition to put out a gum that would become a national seller; something different from everything else; and liking it myself, I naturally thought others would if they were told about it and had a chance to try it.

Q. At the time you first conceived the idea of putting out a spearmint gum had you seen any other spearmint gum upon the market?

A. I had never either seen or heard of one, and I do not think anybody else did until after the advertising.

Mr. Aldrich: I move to strike out the last part of that.

The Court: Sustained.

Mr. Offield: Q. Who designed the label, Complainant's Exhibit No. 1?

A. I did.

Q. What were the circumstances surrounding the designing of that label?

A. When I decided to get out a Spearmint brand the Rubber Paint Company was notified and they submitted me two or three designs gotten up by their printer. When they were brought to my office I refused them. I said it was not what I wanted at all, and immediately drew on a slip of paper the outline of the present spear, as shown, with the word "Spearmint" printed therein, and that was the label that

866 was finally adopted.

Q. Have you continuously since the year 1893 had a Spearmint gum upon the market in a label as appears upon the label of Complainant's Exhibit No. 1?

A. Yes, sir.

Q. Can you state generally how the sales of Spearmint gum ran from year to year, beginning with the year 1893, to 1911?

A. The sales were always very small, as it was not advertised, and in 1896 we put out a campaign gum which contained celluloid buttons of the different candidates, of which one was given free with each five cent package. During this

year the sale of campaign gum was so big that it practically sidetracked all our other brands for the time being.

Q. By sidetracking do you mean totally discontinued?

A. Slowed them up. No, we did not discontinue them.

Q. And did the sale of Spearmint gum increase after the 1896 campaign?

A. To the best of my knowledge, I believe it did. The increase was gradual every year.

Q. Can you recall whether the sale of Spearmint gum between the years 1892 and 1896 was confined to the state of Illinois or was the sale general throughout the country?

A. It was general throughout the country, but our territory at that time was not very large.

867 Q. Was there any effort made to push the sale of Spearmint gum prior to the advertising campaign of 1906?

A. No very big effort. To my knowledge, we only had but two show cards in the early days.

Q. One of your methods of selling chewing gum, is it not, is by way of premiums?

A. It was the entire method until eighteen hundred and—until 1905; 1905.

Q. Just briefly state what that method is.

A. Well, we advertised, take, for instance, a lamp, as a premium. We offered that free with eight boxes of chewing gum, assorted flavors, the theory being that the dealer, while he might not know of our brand of gum, was very well acquainted with the lamp and the value of same, and that in order to get the lamp he would take on the gum and then sell it to the consumer, the lamp being an additional inducement to him.

Q. Was there ever any effort made to sell Spearmint gum in connection with any premium?

A. In 1899 we put out a dater with a box of Spearmint gum, a little daily dater.

Q. And that was your first recollection, so far as you can remember, of an effort to push the Spearmint gum through the premium method?

A. The only time that I know of we used the premium on that brand exclusively.

868 Q. Were all the brands of gum manufactured by the William Wrigley, Jr. Company always listed in the catalogs or other books that your company may have published from time to time?

A. They were not.
Q. Why not?
A. Well, there were reasons at the time, which in all probability were good reasons, but the one reason for not listing the Spearmint was that it had always been my idea to advertise that brand and sell it in what is known in the chewing gum trade as straight gum, without a premium, which is being done today.
Q. Can you state approximately the amount of money that has been expended in advertising by your company in the sale of Spearmint gum?
Mr. Aldrich: That I object to as incompetent and immaterial.
The Court: What is the purpose of that?
Mr. Offield: My only theory on the purpose of that question is, your Honor, to show that Mr. Wrigley or any other man with any acumen at all would not attempt to go out into the market and advertise, sink his millions of dollars into something that he had the slightest intimation that he had ever taken from anybody else or was not his property
869 exclusively.
The Court: I do not think it is material.
Mr. Offield: I suppose it is a matter of common knowledge that that has been done.
The Court: Why, yes, it is done. I do not see what difference it makes whether he spent one million or one hundred million.
Mr. Offield: Well, there is only that inference to be drawn from it that a man is not going to spend his money if he—
The Court: That is a self-serving declaration.
Mr. Offield: It seems to me it is perfectly clear. No question about it, to my mind.
The Court: That is, that he would not go out thinking that.
Mr. Offield: He certainly would not.
The Court: But that is not the question, what he thought. What the fact is, that is the question.
Mr. Offield: That is, the sole question is whether he did it. There is no question about it.
Q. Will you please state when the carton was adopted for your Spearmint gum as shown by Complainant's Exhibit—
Mr. Aldrich: That is not an exhibit. It has not been numbered yet.
Mr. Offield: Complainant's product as identified in the bill of complaint.

A. In the latter part of 1906.

870 Q. You have stated that in the year 1906 you changed in part the manner of wrapping your Spearmint gum from a tin foil to individual pink wrappers. I will ask you to state if this package shows the manner of that change.

A. That is the identical package. It shows the change.

Mr. Offield: I will offer that package in evidence and ask that it be marked Complainant's Exhibit, Complainant's 1906 Package, and that the carton be offered in evidence and marked Complainant's Exhibit, Complainant's Carton and product. (Exhibits filed with bill of complaint).

Q. And has that form of carton and that form of package as offered in evidence by the exhibits just identified been continuously used by your present company and its predecessor since 1906?

A. It has.

Q. Do you recall who printed the labels, printed your original Spearmint labels as identified, Complainant's Exhibit No. 1?

A. Kittredge & Company.

Q. Did William Wrigley, Jr. & Company at that time have charge of the printing of these labels or did some one else have?

A. The Rubber Paint Company, the manufacturer.

Q. The Rubber Paint Company ordered the labels from Kittredge & Company?

A. Ordered the labels.

871 Q. So that William Wrigley, Jr. & Company or yourself had nothing to do with the actual printing of these labels or the making of the gum in your original 1906 package?

A. We had to O. K. the copy. It had to be satisfactory to us.

Mr. Offield: Direct examination closed.

Here is a box of the Doublemint gum, your Honor. It is a little different from the exhibit in the case. It was not a success at that time. The method of sealing the package in waxed paper has been dropped.

*Cross-Examination by Mr. Aldrich.*

Q. Are the packages which you have identified and which have been offered in evidence the only packages of Spearmint gum which you have put out?

A. I do not quite understand that question. The only two packages?

Mr. Aldrich: Read the question.

A. You mean the trade dress is alike?

Q. Yes.

A. Yes.

Q. You did not use the pink wrappers, then, prior to this?

A. No, sir.

Q. I notice that on Exhibit 1 that was introduced in
872 evidence it is described as the New Flavor. How long did you continue to use that language on your labels?

A. We used that until we changed it to Lasting Flavor. I think about twelve years.

Q. Changed about twelve years ago?

A. Yes. No, twelve years from 1894. About 1906.

Q. It was about 1906 that you changed?

A. I think so.

Q. Then that has been one change that has been made in your package that has not appeared, isn't it?

A. The packages in evidence, one is the New Flavor, the other is the Lasting Flavor.

Q. "The Flavor Lasts"—

A. What?

Q. —or "The Lasting Flavor", which is it?

A. "The Lasting Flavor".

Q. Yes. Well, do you say that that change was made in 1906 or at some earlier date?

A. Somewhere around there. I am not positive.

Q. In your testimony in the Grove Case as I understand you, you say the change was made in 1904, do you not? Do you recall that?

A. I do not. It was somewhere in that neighborhood.

Q. To refresh your recollection, I will read from your testimony:

"I now show you a label and ask you if you ever
873 used such a label on your chewing gum product flavored with the oil of spearmint, and during what years this particular form of label was used.

"Ans. The label shown was used from 1893 to 1904. After 1904 the words 'The New Flavor' were change to 'The Flavor Lasts'. Otherwise the label is practically the same as the label now used."

Are you able now to say that you were so interrogated and that you so answered?

A. Yes.

Q. Now, in view of that answer, which was it, in 1904 or 1906, that you changed the label?

A. Well, it was in that neighborhood, between 1904 and 1906.

Q. Can you answer more definitely than that, Mr. Witness?

A. No, sir.

Q. You do not know, then, whether it was 1904 or 1906?

A. No, I don't, positively.

Q. I show you a letterhead purporting to be a letter written by you on the 15th day of September, 1908, and picturing the Wrigley Spearmint chewing gum with the words "The New Flavor" on it, and ask you now, in view of that answer, what you have to say with reference to that.

A. Well, these letterheads may have been printed in 1904 or previous to that. We do not get letterheads out every
874 week, you know.

Q. I show you another letterhead, dated the first day of October, 1906, in which I find the same description on your Spearmint Package.

A. Well, that, in all probability was a re-order of a letterhead that had been lithographed and the plates held. It is a small matter. We wouldn't change a plate to change that.

Q. Well, are you able to say that by any of your letterheads prior to 1908, the latter part of 1908, you showed any such change on your package?

A. No.

Q. You are not?

A. No.

Q. I notice that these two letters to which I have directed your attention also show that the package is yet a foil wrapped package, do they not?

A. The answer would be the same as previous. Those letterheads were lithographed and printed in large quantities, and that package on there might be either.

Mr. Aldrich: I do not know how the Court does with these things. Of course, I cannot offer these now, but I would like these two letterheads to be identified, marked for identification. One is Defendant's Exhibit 1 for Identification; that is 1908. The letter of October 1, 1906, is marked Defendant's Exhibit 2 for Identification.

875 (The documents were marked as follows: "Defts. Ex. 1 Ident 3/12/17 F. W." and "Defts Ex. 2 Ident 3/12/17 F. W.")

Q. When was the Spearmint first put upon your letterheads?

A. I think the heads you have shown were about the first I have known of. What is the date of that?

Q. Do you know when those letterheads were ordered, Mr. Wrigley?

A. I do not; no, sir.

Q. I see that they purport to be from the Milwaukee Lithographing Company. Does that assist you any?

A. None whatever. I did not buy the letterheads in those days.

Q. Well, perhaps we can get at a date—and dates are important, as you know, in this case—from the fact that both letterheads show that your office and warehouse is 88 and 90 Michigan Avenue. At what time did you move into 88 and 90 Michigan Avenue?

A. 1902, I think, or the tail end of 1901.

Q. Prior to that time your location had been—

A. 117 Kinzie Street.

Q. —117 and 119 Kinzie Street?

A. Yes.

Q. You had a lease there, as I am advised, for five years, which you sub-let to—to whom did you sub-let?

A. I think it was the Dickinson people, the seed man.

876 Q. Well, you moved into 88 and 90 Michigan Avenue prior to the expiration of your lease on 117 and 119 Kinzie Street?

A. Yes. I think General Newberry took the lease off our hands for a consideration. I do not think we sublet it. I don't remember now.

Q. You concede, do you not, that this was put on after you got into 88 and 90 Michigan Avenue?

A. I should think it would be very reasonable, yes.

Q. Yes, that would be reasonable. And you think you went into Michigan Avenue in 1902?

A. It would be the latter part of 1901 or the fore part of 1902; I do not remember now which exactly.

Q. Don't you think you went into Michigan Avenue May 1, 1901?

A. I said 1901 or 1902.

Q. You said the latter part of 1901. What do you think now, in view of my suggestion, was the date when you went to 88 and 90 Michigan Avenue?

A. That can be easily looked up if we have time to look up the lease.

Q. I have done so, Mr. Wrigley.

A. Then you are right.

Q. Now, you issued what were called red books or catalogs, showing your premiums, did you not?

A. Yes, sir.

Q. When did you issue your first red book?

A. I am trying to think where we were located. I can-
877 not give you the exact date.

Q. Well, where were you located? Maybe I can assist you again.

A. 117 Kinzie Street, I think.

Q. You were there how long?

A. About three or four years; three years, I think.

Q. What?

A. Three years, I think.

Q. Your lease there was for four years, was it not?

A. Yes, sir.

Q. You were there three years?

A. I think so.

Q. Issued your first edition, then, while you were there. Was it at the beginning of your tenancy there or towards the end.

A. About midway, I should say.

Q. How many editions of your red book did you issue while you were at 117 and 119 Kinzie Street?

A. I could not answer that question. There has only been seven editions altogether since we have been in business.

Q. I have in my hand what purports to be the ninth edition. What do you say now to that answer? Look at the front page. The ninth edition.

A. Well, that is the ninth edition just gotten out.

Q. Yes. Do you wish to change your answer that there have only been seven editions?

A. Call it nine.

Q. I again ask you how many editions you issued at 117 and 119.

A. I cannot answer that from memory.

878 Q. You mean that you cannot remember; is that what you mean?

A. Yes.

Q. Have you any means of refreshing your recollection?

A. I presume the men who look after that particular department could tell me exactly.

Mr. Aldrich: I have served notice upon counsel and also subpoenaed certain officers here to produce the red books. I will ask for them.

Mr. Offield: I have brought every red book that can be found about that place, Mr. Aldrich.

Mr. Aldrich: I knew that, Mr. Offield. I was sure of that. Now, we won't get ours mixed. I will put mine over there.

Mr. Offield: The dates have been pinned into those red books, and if you want the men that pinned in the dates we will bring them in.

Mr. Aldrich: Q. I believe you said you could not tell when it first appeared in your red book.

A. No, I cannot. I know that it was not in the first; at least, I am very sure it was not in the first one or two issues.

Q. I will read from your testimony in the Grove case and see if that refreshes your recollection.

879 "Will you please state when you first began to include Spearmint chewing gum in your red book catalog and why you did not include this flavor in said catalog prior to the time that it was first included?

"Ans. The original catalog was printed in three color work, and at the time we got that out it was not our intention to offer Wrigley's Spearmint brand with premiums. In the latter part of 1903 we changed from three color work to lithography and all red book catalogs which have been issued since that time show the Spearmint brand with the others."

Do you recollect being so interrogated and so answering?

A. Before answering that I had probably looked it up.

Q. And in the Norris record, at the bottom of page 77:

"Will you please state when you first began to include Spearmint in your premium catalog and why you did not include this flavor in your red book catalog prior to the time you mention?

"Ans. Prior to 1904 the catalogs were printed by the three color process, the original plate was used continuously for what few catalogs were printed by the three color process; at the time the three color catalogs were gotten out we did not care to offer Spearmint in the premium assortment; in 1904, when the first lithograph catalog was

880 printed, it being necessary to make entirely new plates, it was shown in the catalog"—

A. In 1894?

Q. Yes.

"—it was shown in the catalog among the other principal flavors."

Now, later you corrected that answer and said 1904: it was 1904. Now, which was it, 1903 or 1904?

A. Well, either one; 1903 or 1904.

Q. Now, in the Norris record, at page 79, you made yourself definite at last by stating that you knew that the supplemental red book shown you was the one that first had it in it, because you say it was the first red book in use after you went into 88 and 90 Michigan Avenue, which you said there was in March, 1903. I refer to page 79 of Norris. Now, I call your attention to these things—

Mr. Offield: Do you want to see this testimony? (Handing copy of testimony to the witness.)

Mr. Aldrich: Q. I will read from the middle of page 79.

"Will you please state how you come to know that the red book referred to was published during the year 1904?

"Ans. It was the first red book issued after we moved into our new building, 88 and 90 Michigan Avenue, which was March, 1903."

881 A. That applies, I think, to the issuance of the red book; not when we moved into the building.

Q. Well, let us locate both those dates, if we can. Now, when do you say you moved into the building?

A. No, no.

Q. When do you say now, independently of the book, Mr. Wrigley?

A. We started in Michigan Avenue ten years after I started in Chicago; so that would make it 1901.

Q. And then you issued the red book—you think that the answer refers to—March, 1903?

A. That refers to the issuance of the red book; yes.

Q. Yes. Now, when was your first contract for street car advertising entered into?

A. The latter part of 1906; for Spearmint. We made street car contracts previous to that in 1893; not for Spearmint.

Q. Not for Spearmint. And you commenced your advertising campaign in January, 1907, in Buffalo, did you not?

A. We started to pay for it then, but I think the cards ran October, November and December in 1906, which the street car company gave us free.

Q. Those were just teasers, then, were they not?

A. The first month was a teaser, but I am rather sure the descriptive cards came out in 1906.

882 Q. If you have answered other times that you began in Buffalo in 1907 you were mistaken, then?

A. No; we began, because our expenses began to run then; but I think the railroad company gave us a free show before they started to bill us.

Q. You had your advertising campaign in Buffalo, then, in the early part of 1907 they were running?

A. Yes.

Q. And you went from there to Rochester, didn't you, and Syracuse?

A. We went on down through the state.

Q. Rochester and Syracuse?

A. Yes.

Q. You did not get to greater New York until November or December, 1907, did you?

A. That is my recollection, yes.

Q. Well, I am right, am I?

A. Yes.

Q. By the way, you said something about Mr. Scatchard being with you until 1898. Do you want to correct that statement?

A. That was the year of the Spanish-American war, wasn't it?

Q. Yes, it commenced that year.

A. That was the year, to my recollection, that I bought him out.

Q. At page 72 of the Wrigley portion of the Norris interference record you said, in answer to this question:

"Prior to the organization of the corporation, with what company were you associated, under what name, and for how long?

883 "Twelve years," you answer. "Twelve years; we, the company, was the same name. The original business was started in 1892; I think our original partnership papers were in 1891.

"Ques. Who composed the partnership when you started in 1891?

"Ans. William Wrigley, Jr., and William Scatchard, Jr.

"Ques. For how long was William Scatchard, Jr., associated with you?

"Ans. Five years.

"'Ques. And at the end of five years did Mr. Scatchard dissolve partnership with you?

"Ans. He did."

Is that correct?

A. That should have been about five years.

Q. Yes.

A. Yes.

Q. Page 36 of your record in the Pulver case, where you were testifying as a witness, you were asked this question, and answered as follows, according to the record:

"Ques. Please state the name of the company you were first connected with.

"Ans. The name of the concern was William Wrigley, 884 Jr., & Company when I started in 1893. This was a co-partnership consisting of William Wrigley, Jr., and Scatchard, Jr. It existed, I think, until 1895, when I bought out Scatchard's interest in the business." Now, when was it that Mr. Scatchard and you dissolved?

A. I have since looked it up. It was 1898.

Q. 1898. This was a mistake, then?

A. It don't say I started there in 1893, does it?

Q. It say, "When I started in 1893."

A. Well, that refers, I presume, to the Spearmint.

Q. I call your attention, in view of that last answer, to the question:

"Please state the name of the company you were first connected with."

I am not talking about Spearmint.

A. All right.

Q. And you say it started in 1893. On page 39, again, of this same record you refer to this matter. On cross-examination you were asked:

"Ques. In what part of the year 1893 and 1894 did you commence manufacturing chewing gum as an individual or corporation?

"Ans. To the best of my recollection, in the the early 1893.

"Ques. Prior to that date what had your business 885 been?

"Ans. Manufacturer of scouring soap."

"Ques. 14. You say that during 1893 or 1895, you were in co-partnership with one William Scatchard, Jr.?

"Ans. Yes.

"Ques. When you and Mr. Scatchard dissolved partnership what, if any, instruments in writing were drawn up in reference to the same?

"Ans. I gave his father cash and notes, and the regular agreement was drawn up and properly acknowledged."

Now, what was the first gum that you put out when you commenced to manufacture gum in 1893?

A. Lotta.

Q. What?

A. Lotta.

Q. Lotta?

A. L-o-t-t-a.

Q. Was that before or after—

A. That was in 1892, sir. September, 1892, the records show.

Q. Well, there is the beginning of your business in 1892, then?

A. Of chewing gum, yes.

Q. Yes. And the partnership from 1891.

A. 1891.

Q. And your first gum was Lotta?

A. Lotta.

Q. When did you get Juicy Fruit?

A. That was shortly after we got out Vassar, which I think was in 1893.

Q. And what other gum did you get out at that time?

886 A. Well, we had a brand called Smyrna gum, and a foil wrapped pepsin.

Q. Which one of the two pepsin packages that I find you have got out did you get out at that time?

A. Two pepsin packages?

Q. Yes. Don't you recollect that you got out two pepsin packages?

A. One wintergeen and one peppermint.

Q. I do not know anything about the flavors.

A. The green one.

Q. I am just talking about the different wrapped packages.

A. Yes.

Mr. Offield: I think the witness ought to be shown the package.

A. I can't think back twenty-three years in little details like that. The letterhead won't prove anything.

Q. Look at the papers we have identified, already in evidence. Perhaps that will refresh your recollection. You see two pepsin packages on record.

A. That is paper and foil pepsin. That is what I said.

Paper and foil. Practically the same, only wrapped differently.

Q. Which one of those did you get out in 1893?

A. The foil wrapped was the first.

Q. I ask you if that is a letterhead that you used up 887 till the time you went into 88 and 90 Michigan Avenue. (Handing Letterhead to witness.)

A. That was one of them.

Q. How long did you use the letterhead I have referred to?

A. I don't know. Until the edition was exhausted, I should say.

Q. Then how was it changed?

A. We have had a great many letterheads. I cannot tell you the next one to that in sequence.

Mr. Aldrich: Let the letterhead be marked for identification Defendant's Exhibit 3.

(The letterhead was marked "Defts Ex. 3 Ident 3/12/17 F. W.")

Q. This letterhead refers to Juicy Fruit and Pepsin gum as your products at that time.

A. As part of our products, yes.

Q. Does it say anything about part?

A. No. It is not necessary that it should on a letterhead.

Q. Does the fact that this was issued from 85 to 87 Kinzie Street, assist you in any way as to when this was got out?

A. That ought to be 1895.

Q. And you did not go there until 1895, did you?

A. I don't think so.

Q. No. So that these gums were issued about 1895, 888 you think?

A. Oh, no, they might have been issued years before. That does not prove anything.

Q. It is not, Mr. Witness, what might have been. I am trying to get from you what the facts actually were. Now, when was your Juicy Fruit which you featured for so long, and your Pepsin gum issued, if you know?

Mr. Offield: You mean issued or put on the market?

Mr. Aldrich: First put on the market. That is what I mean by issuing.

A. Well, they were practically all together.

Q. And when?

A. In 1894, I should say.

Q. Did they precede or follow Spearmint?

A. Juicy Fruit followed Spearmint, I think. I won't swear to that positively, though.

Q. Now, you have identified a certain carton or box that is admitted here. Did Adams & Company use a carton or box like that prior to your use of it?

Mr. Offield: I object to the question, your Honor, unless it specifies as to colors or shape of what he is endeavoring to reach by the question.

Mr. Aldrich: Well, I intend to show that practically, both in shape and design and in color, such a box was used by Adams & Company he did it.

The Court: What is the question?

889 (The question was read.)

The Court: The question is proper. Answer the question.

A. I think they did.

Mr. Aldrich: Q. You were not the first to use pink wrappers or individual sticks, were you?

A. No, sir.

Q. Mr. Wrigley, I show you a circular that was issued by the Di-Gesto Company, Rochester, New York, F. F. Pulver, treasurer, entitled, "A Little History," and attached to the answer in this case as Exhibit 1. I will ask you if this is a true representation of your Juicy Fruit package.

A. Yes, sir.

Mr. Offield: I object, your Honor, to that question. This is entirely secondary evidence, not the best evidence.

The Court: He is asking a certain question about it.

Mr. Offield: He is referring to a document.

The Court: Set up in the answer.

Mr. Offield: Set up in the answer, yes, and issued by somebody else and not proved.

The Court: He is asking him a question about it on cross-examination, to test his knowledge and recollection.

Mr. Offield: It certainly is not the best evidence, your Honor.

The Court: He is not introducing it in itself. He is

890 cross-examining the witness. It does not have to be the best evidence on that.

Mr. Offield: Well, we will see how far he gets with that document, then.

Mr. Aldrich: Q. That is a correct description of your Juicy Fruit package?

A. Yes, sir.

Q. You refer to the first entry on this line on the right hand column?

A. Yes.

Q. I show you also a package, being the first one on the left hand column, and ask you if that is a correct copy of the Primley California Fruit Chewing Gum.

A. I do not see the word Primley on it.

Q. It says California Fruit. You know the package well, do you not?

A. I do not?

Q. You do not?

A. I would have known it years ago, but it has been extinct a good while. California Fruit was Primley's manufacture.

Q. You knew that?

A. Yes.

Q. Is it a correct description of it, Mr. Wrigley?

A. As far as I can see, yes.

Q. I show you the second package down here, known as Wrigley Pepsin Chewing Gum. That is a correct copy of your package, is it not?

A. Yes.

891 Q. Referring to the second package on the right hand column.

The Court: The second from the top?

Mr. Aldrich: The second from the top. In all these I am going from the top down, if the Court please.

Q. Now, in the Beeman's Pepsin Chewing Gum, is that a correct copy of the Beeman package pepsin?

A. I think it is, yes. Near enough, I know.

Q. They are both foil wrapped packages, are they not, Mr. Wrigley?

A. They are; yes, sir.

Q. They differ, however, in outside counterband, do they not?

A. Yes, quite a little.

Q. Now, Primley put out, or offered for sale, the California Fruit Chewing Gum before you offered Juicy Fruit, did he not?

A. I think he did.

Q. And Mr. Beeman had put out Beeman's Pepsin Chewing Gum before you offered Wrigley's Pepsin Chewing Gum?

A. Yes. There was half a dozen brands like this out at

the same time. I do not know whether Primley originated it; in fact, I know he did not.

Q. I do not want to go into side issues—

A. All right.

Q. —but I will ask you who did.

A. Adams, I should say.

Q. Now, I call your attention to the third package. Your Vassar Chewing Gum, which you have mentioned; is
892 that a correct description of your Vassar?

A. That is correct at the present date. Originally it had only a rubber band around it.

Q. Originally it had only a rubber hand around it?

A. Yes.

Q. When did you change from the rubber band to a white counterband?

A. When rubber bands became more expensive than paper.

Q. And when was that?

A. Oh, not very many years ago. Four or five years. I can't tell exactly.

Q. Well, it was long before your suit with Pulver, wasn't it?

A. I should say yes.

Q. And you settled that December, 1913, didn't you?

A. We did not settle any suit.

Q. Well, all right. You came to an arrangement so that you bought Mr. Pulver's business, then?

A. The records show that I bought his business, yes.

Q. Well, does that refresh you? How long before that had you put the white counterband on it?

A. I don't know.

Q. A number of years?

A. No, not so very many years. That was put on since we have been over in the Kesner Building.

Q. But prior to that time W. G. White, of Cleveland, had put out this package of Yucatan, had he not?

893 A. Yes, many years ago.

Q. From 1888?

A. Yes.

Q. He was on the market with that prior to your Vassar, wasn't he?

A. Oh, yes.

Q. Now, I show you the fourth one down, what we call Sweet Sixteen, Wrigley's Sweet Sixteen Tulu, consisting of

five squares, each square wrapped separately. That is a correct representation of your package, is it not?

A. One of them. There are six of them.

Q. But that is one of them?

A. Yes.

Q. Prior to that time Kiss-Me Gum in this shape had been put out, had it not?

A. Yes, sir.

Q. By whom?

A. There were a large number of square packages out when we went into the gum business. The first six sizes represented the trade dress for all chewing gum.

Q. These sizes?

A. Yes, the sizes of the gum there.

Q. Well, we have gone, then, to the fourth one down, Wrigley's Nips. You put that out subsequently to Fleer's Chiclets, did you not?

A. Yes, but Fleer's were white.

Q. You say Fleer's were not the same color as yours?

A. No. We had ours red and black and yellow.

894 Q. Is this a true copy of yours?

A. No, it is not.

Q. Didn't you put out any of this color?

A. No.

Q. You did not?

A. We did not.

Q. Did Fleer put out any of that?

A. No, it was lead colored; but previous to Fleer there was some little candy coated gum.

Q. Now I come to your Wrigley's Spearmint. Didn't Pulver's Spearmint in that shape—wasn't that Pulver's Spearmint?

A. I don't remember.

Q. You don't remember?

A. No.

Q. Didn't Oscar St. Louis send you some from the South in 1905?

A. I do not remember that he did; no, sir.

Q. And didn't Cassidy, P. J. Cassidy, send you chewing gum of that kind?

A. Not that I can remember.

Q. Didn't you have it on your desk before you ever put out any Spearmint and talk with John J. Cochrane about it?

A. I did not.

Q. You do not remember Oscar St. Louis sending it to you?

A. I do not.

Q. Nor P. J. Cassidy sending it to you?

A. No, nor no other discharged employe.

Q. Why do you say discharged employe?

A. I said no other discharged employe.

A. You do not say that with reference to Mr. Cassidy,
895 do you?

A. Yes, sir.

Q. I hand you a letter of recommendation of Mr. Cassidy signed by you, and ask you if you still want to say it.

A. I never signed that letter, sir.

Q. It is signed in your name, isn't it?

A. Well, he might have signed it himself. I won't say that he did, but I never signed it.

Q. Now, tell us who signed it, Mr. Wrigley. We do not want suggestions of that kind in this case.

The Witness: (To Mr. Offield) Can you tell me who signed that?

Mr. Offield: No.

A. I could not tell you, sir, who signed it. It is not my signature. I could not write that way if I tried.

Q. It bears the name of William Wrigley & Company, doesn't it—Junior & Company?

A. Yes. But I did not sign it, and never knew of its existence.

Mr. Aldrich: The letter referred to, if the Court please, is the one already identified in evidence as Defendants' Exhibit 1 for Identification, for identification.

The Court: Which is marked for identification.

Mr. Aldrich: Yes, it is marked for identification. I did not speak accurately, quite.

Q. Now, who sold any Spearmint gum for you? Name
896 any dealer prior to 1904.

A. Prior to 1904?

Q. Yes, sir.

A. About every dealer we did business with in the Middle West, Pennsylvania and New York.

Q. Well, name some of them.

A. We did business exclusively, then, or almost exclusively, with retailers. I do not think I can name a list that would be worth while.

Q. Can you give any one's address in Rochester, New York, to whom you sold Spearmint gum prior to 1904?

A. Not now, because we sold to retailers only in those days.

Q. I call your attention to page 43 of your testimony in the Pulver case.

"Can you give the name of any person, firm or corporation in the State of New York who sold and to whom you sold your gum product prior to the year 1904"?

"Ans. Previous to 1904 we marketed our goods entirely to the retailers, and it would be impossible to give the names of this date."

Were you not so interrogated and didn't you so answer?

A. Yes.

Q. Further:

"You have no records of any kind that would give that information nor do you know where those records could be obtained?

897 "Ans. No. The records are not in existence."

Weren't you so interrogated and didn't you so answer.

A. Yes.

Q. Can you now state any person to whom you ever sold any Spearmint gum prior to 1904?

A. No.

Q. Haven't any records of any kind—

A. We have not.

Q. —That would show you sold it prior to that time?

A. No special records, no.

The Court: Have you any records?

A. Since 1904?

The Court: The question the witness is asked is whether or not he has any records. He says no special records. Put the question again.

A. I do not quite understand the question. Do you mean to whom we sold it or records that we did sell it?

Mr. Aldrich: Q. Records to whom you sold it.

A. You mean book accounts?

Q. Prior to 1904.

A. No, I do not think so. No book accounts. That is what he is after.

Mr. Offield: Q. No book accounts showing the sales or individuals to whom it was sold?

A. No. We have other stuff that would prove it, I guess.

Mr. Aldrich: Q. How long had your agents who were

out on the road, if at all, been sending you gum, the
898 Pulver gum, prior to the time you gave your deposition in the Pulver case?

A. How long they had been sending me in samples of it?

Q. Yes; samples of it.

A. Only a few months, I think.

Q. Who do you qualify your answer by saying you think? Haven't you a definite recollection about it, Mr. Wrigley?

A. Well, I am under oath and I would rather—

Q. You do not know, then?

A. I would say a few months, if you put it that way.

Q. I call your attention to page 47 of the Pulver record.

A. I haven't it here, sir.

Q. Yes.

A. Oh, I thought it was a book.

Mr. Offield: Whose is this, Pulver's testimony?

Mr. Aldrich: No, it is Mr. Wrigley's testimony. Before you show him that, Mr. Offield, I want to ask him one other question.

Q. For how long a time prior to your giving your testimony in the Pulver case, had your customers been sending you Di-Gesto or Pulver gum?

A. Some months.

Q. Only months, you think?

A. I think so.

Q. Now, in view of that answer, I call your attention to page 47 of your testimony in the Pulver case, this question:

"When did you first see a package smiliar to the one you have last described."

899 This was the Pulver package, Di-Gesto package.

"Ans. Our customers had been mailing samples of them to us for several years. I cannot say definitely just what year they first came to my notice, but think it was in 1908 or 1909."

Were you not so interrogated and did you not so answer?

A. The record shows it.

Q. And in view of what the record shows, what do you now say as to when the customers sent you packages of Di-Gesto gum?

A. Well, I would say that it would be for months. I did not say how many, several months. It might have been twenty-four or twelve.

Q. That is the only explanation you desire to make to the Court?

A. That is the only one I want to make.

Q. When did you say that you advertised Wrigley's Spearmint Pepsin Gum by that dater?

A. In 1899, April.

Q. I again call your attention to page 47 of your record in the Pulver case, in which you were asked this question:

"Ques. 66. You heretofore testified in the case of William Wrigley, Jr., & Company versus the Grove Company as follows: 'In 1904,' (this is quoted from your testimony in the Grove case) 'In 1904 we started what has since be-
900 come a national advertising campaign.' What did you do in that year towards starting such a campaign?

"Ans. In 1904 we advertised Wrigley's Pepsin Spearmint Gum by presenting the retailers with a rubber dating stamp free with each box, and by mailing out circulars and other ways that were within our financial ability at that time."

A. That is absolutely correct.

Q. Were you not so interrogated and did you not so answer in the Pulver case?

A. I did, sir; but that was the second dater we got out, a very much larger one. It had no reference whatever to the one in 1899.

Q. That is your explanation?

A. That is absolutely so.

Q. Now, Mr. Wrigley, what do you say of this dress? I call your attention to Exhibit 2 of the answer filed in this case and direct your attention now to No. 1. When do you say that answer was printed by Kittridge & Company?

The Court: Answer?

Mr. Aldrich: That label. Thank your Honor.

A. I should say it was printed in 1894.

Q. 1894?

A. Yes.

Q. And was that the one that you used from 1894 on, to what time?

A. Until 1906. There was very little change in that
901 label until we put out the paper wrapped package.

Q. And that was in 1906 or 1907?

A. 1906.

Q. 1906?

A. Yes.

Q. I call your attention now, in view of that answer, to No. 2, Exhibit 2 to the Defendants' answer herein, and ask you when you put that out.

A. That was very much later than the first one.
Q. How much later?
A. I don't know.
Q. Well, what do you think?
A. Do you want me to guess at it?
Q. No, I do not.
A. Well, I do not know how much later. I will refuse to answer.
Q. Later than what date?
A. Later than the first one. Later than 1894.
Q. Later than 1894?
A. Yes, later than that.
Q. I have understood you to say that No. 1 was used from 1894 up to 1906; is that correct?
A. In general plan, yes. There may have been some little differences in the color of the ink or in the wording of "The Flavor Lasts" or "The Lasting Flavor,"—something like that. It shows there was, because you have it there.
Q. Well, now, to refresh your recollection, I will call your attention to the fact that the Spearmint on this first package, No. 1 only appears in one place, while in the second
902 package, No. 2, it appears on the side of the package also.
Now, does that enable you to tell when the change was made?
A. I should say in 1905 to 1906.
Q. Well, I have understood the first was used up to 1906. Am I correct in that?
A. I do not know what you understood, but what I meant is that the main label, the main lay-out, the design and colors, yes.
Q. With the spearmint and "The New Flavor"?
A. The word "Wrigley's" and the spearmint.
Q. And "The New Flavor"?
A. Yes.
Q. Until 1906?
A. Yes.
Q. Then this was subsequent to that, was it not?
A. Yes.
Q. Then would you say during the year 1906 or at a later date? I am talking about No. 2 now.
A. Why, I would say 1906.
Q. Now, I call your attention to label No. 3 on Exhibit 2 of Defendants' answer, and ask you when that was adopted.

You will see that the spearmints now are on both sides of the package as well as on the top.

A. Yes.

Q. Now, when do you say that was?

A. 1907, I should say.

Q. Now I call your attention to a white individual 903 stick wrapper, and ask you when you used that.

A. Well, somewhere around 1907. I don't know exactly.

Q. Then you did not go, as you testified originally, from the foil wrapped package, that is, foil around five sticks, to the pink wrapper directly, did you?

A. We made them both for a long while.

Q. That is, a white wrapper?

A. No.

Q. How long did you use this white wrapper for the individual stick?

A. I don't know. Very few of them, I guess.

Q. Did you use it?

A. I think we did, yes.

Q. And how long?

A. I had forgotten all about it. I do not know. A very little while. I think that was used with a foil wrapper around the outside.

Q. Our investigations lead us to think that this was printed for you May 21, 1906.

A. It might have been around 1906.

Whereupon a recess was taken to 2:00 o'clock P. M. the same day.

904 Monday, March 12th, 1917. 2:00 P. M.

Court met pursuant to adjournment.

Present, as before.

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WILLIAM WRIGLEY, JR., having been previously called as a witness on behalf of the complainant, resumed the stand, and further testified as follows:

*Cross-Examination by Mr. Aldrich.*

Q. Mr. Wrigley, your attention had been called just prior to the adjournment to the different labels used and the change

in labels on your Spearmint package from time to time. Now I understand, by your bill against the defendant in this case, that you claim to have a certain color scheme. Now, in what does that color scheme consist?

A. Red and green and white on white paper.

Q. On the counter-band?

A. Yes.

Q. And the fact that the individual sticks are wrapped in pink wrappers and project beyond the white counter-band with the red and green lettering on is not a part of your color scheme then, as you understand it?

A. Well, it is a part of the package but I don't know
905 as I would call that a part of the color scheme.

Q. I understand you say also that the wrapping of the individual sticks in pink wrappers ante-dated your manufacture of Spearmint; is that true?

A. Yes, sir.

Q. So you didn't originate that?

A. No, sir.

Q. Now, in 1911, your Spearmint gum was well known, wasn't it?

A. Pretty much all over the United States in 1911.

Q. Yes.

A. Except in the South. I don't think it was well known there then.

Q. And you had advertised it quite extensively?

A. Yes, sir.

Q. Not only by newspapers and magazines but also in the street cars in the leading cities in the North and East?

A. The first few years the advertising was confined entirely to street cars.

Q. The gum which you have put out and called Spearmint is flavored with oil of Spearmint, isn't it?

A. That is one of the ingredients, the principal one.

Q. Yes. It is the flavor that gives the taste to the gum, wasn't it, the predominant flavor?

A. Yes, sir.

Q. And that is a markedly different flavor from winter-mint or peppermint or any other flavor?

A. Very decidedly.

906 Q. Isn't it.

A. Very decidedly.

Q. And you had advertised, as I see from your testimony

in former cases, the word "Spearmint" and this flavor very extensively prior to 1911?

A. Yes.

Q. So that your gum had come to be known as Spearmint gum, hadn't it?

A. Yes, sir.

Q. The Larson gum was flavored with peppermint, wasn't it?

A. I think it was, I am not positive.

The Court: Q. What is the difference between spearmint and peppermint?

Mr. Aldrich: A great deal of difference, if the Court please.

The Court: I say, what is the difference.

Mr. Aldrich: There are several different branches of the mint family. One is spearmint, another is peppermint, and one has a sharp pungent flavor and the other has what we generally call the mint flavor, such as we have in mint juleps. I don't know as your Honor ever tasted that.

The Court: Yes, I have some very pleasant recollections of that.

Mr. Aldrich: I have, too.

Q. Can you give the Court any additional information on the difference between spearmint and peppermint, further than I have given, Mr. Wrigley?

907 A. Why, they are both mints but there is quite a distinctive difference in the taste of them.

Q. Yes.

A. Peppermint has been used for years as a flavor but spearmint was never much of a success as a flavor. I think it was originally used for perfuming soap.

Q. Yes, I think so.

A. And was also used to give babies when they had the colic.

Q. I didn't know that.

A. Yes, in my own family.

Q. And people, when they want your flavored gum, ask for spearmint gum, don't they?

A. Mostly, yes.

Q. That is your experience generally. It had such a distinctive flavor that when people were educated to want it, they wanted that flavor, didn't they?

A. I presume that is the reason they bought it.

Q. Yes. Well now, will you explain to the Court how

people who are asking and inquiring for Spearmint gum would be given peppermint gum?

A. When in thousands of cases the consumer doesn't ask the dealer at all. He has boxes displayed in a row and they will pick it up.

Q. Pick it up?

A. Pick it up and put down their nickel and they then get something—they haven't got what they wanted when they get out.

Q. And that is the reason why, as I understand you and as I would conceive, that they might be misled by the
908 dress.

A. By the trade dress, a careless purchaser.

Q. Would a careful or ordinarily intelligent person be misled, in your judgment?

A. Not if they examined it very carefully, no. They could read the name on it.

Q. Or if they asked for Spearmint gum they would not be misled unless the dealer was dishonest?

A. No, sir.

Q. Mr. Wrigley, did your firm receive a letter from L. P. Larson, Jr. Company under date of May 29th, 1914?

A. Not that I ever heard of, no, sir. If it was received, I never heard of it.

Q. You mean by that if it was received in the course of business it was not reported to you?

A. No, sir, and I think it would have been had it been received.

Q. You have had a notice to produce such a letter, prior to February 5th, when this case was formerly set for trial. I will ask your counsel whether or not you have had that letter of May 29th, 1914?

Mr. Offield: Mr. Aldrich, I think if you will let us see what that letter is, we will check up on it and see whether we have received it or not.

Mr. Aldrich: I served notice to produce.

Mr. Offield: Who was the notice on?

Mr. Aldrich: It was on you and also a subpoena duces tecum on Mr. Cox and I think one or two other members
909 of the Wrigley Company. If your Honor please, here is one of those circulars we have been referring to during the day.

(Counsel hands circular to the Court.)

Q. If you say you have not seen that letter, Mr. Wrigley, I find that I might take some time of the Court by looking it up and I will look for it after a while.

A. All right.

Q. And call your attention to it later.

A. All right.

Mr. Aldrich: Mr. Larson, will you kindly look over these letters here and see if it is there? That is a copy of it. (addressing Mr. Offield.) Here is another copy. This is a carbon of the letter that was actually sent.

Q. This is a carbon of the letter that was actually sent. The letter concerning which I was interrogating you was in the words and figures shown by the carbon copy which I hand you. (Counsel hands document to witness.)

A. I don't remember having seen it, sir.

The Court: What was the answer?

Mr. Aldrich: He says he does not remember ever having seen it. That letter, I will use a carbon copy and let Mr. Offield verify it. If there is any doubt about it at all or any dispute about it, why, I will resort to further proof of course, so I will just identify this.

(Thereupon a certain document was marked Defend-
910 ant's Company 4 for Identification.)

Q. I hand you what purports to be an answer to the letter in question, excepting only the notation on the bottom, which I understand is a notation Mr. Larson made at the time he communicated its contents to me and gave instructions.

(Counsel hands document to witness.)

A. Yes, that is signed by Mr. Cox, J. C. Cox.

The Court: Q. Who is he?

A. He is secretary—he is treasurer of the company now.

Mr. Aldrich: Q. Treasurer of the William Wrigley Jr. Company, is that right,

A. Yes, sir. Now, he wasn't at that time.

The Court: Q. What was he at the time that letter was written?

A. He was assistant to Mr. A. G. Cox.

Mr. Aldrich: Q. And who was Mr. A. G. Cox?

A. Raw Material Department, and vice-president of the company, and treasurer of the company.

Q. Treasurer and vice-president of the company?

A. Yes, sir, treasurer and vice-president.

Q. And Mr. J. C. Cox, who signed this letter, was an assistant to him?

A. At that time, yes, sir, assistant treasurer.

Mr. Aldrich: Let that letter be marked for identification, Defendant's Exhibit 5.

911 (Thereupon a certain letter was marked Defendant's Exhibit 5 for Identification.)

Q. Then I show you a carbon copy of a letter dated June 3rd, answering the letter of the 2nd, which has just been identified, and ask you whether that was called to your attention? (Counsel hands document to witness.)

A. Not that I remember. I have never seen any of that correspondence before.

Mr. Aldrich: Let the carbon copy be marked Defendant's Exhibit 6 for Identification.

(Thereupon a certain copy was marked Defendant's Exhibit 6 for Identification.)

Q. You are unable to give the Court any information then about that correspondence?

A. Yes, sir.

Q. Have the labels which were enclosed in the last letter of June 3rd ever been called to your attention?

A. Not that I know of, no, sir.

Q. Well, you would know of it if they had been, Mr. Wrigley, wouldn't you?

A. Well, in the rush of business they might have been shown to me and passed along. They didn't make any impression on me anyway.

Q. Mr. Wrigley, you were examined in the Grove case in 1908, I believe?

A. Yes, sir.

Q. And when interrogated as to why, in the application for your Wrigley trade-mark in April, 1907, you had

912 given the date of 1900— Do you recall your counsel's statement made in making an objection, made on the record and entered on the record?

A. I recall the fact that Mr. Offield asked me how long we had used it and I said "Oh, for years."

Q. And that is for what took place between you and Mr. Offield?

A. Yes, sir.

Q. When no one else was present, and concerning that I am not interrogating you. I am asking you for the state-

ment that was entered on record in the Grove case at page 151 and ask you if you recall it now?

A. I don't recall the particular testimony you refer to, unless you read it to me.

Q. You were asked as follows: "Isn't it a fact, Mr. Wrigley, that during the pendency of your application for the registration of trade-mark in the Patent office, which trade-mark is number 64,816, you were obliged to erase the word "Spearmint" from the spear shown in such trade-mark because said word was descriptive?" Mr. Offield stated the following on the record: "The question is objected to on the ground that this witness did not prosecute said trade-mark application in the Patent Office and for the better information of all parties counsel states that at the time the trade-mark application referred to was filed that the drawing showed the representation of a spear with
913 the word "Spearmint" thereon, the alleged date of using being January 1st, 1900. This application was filed at a time when Mr. William Wrigley, Jr. Was exceedingly busy and did not have the opportunity to go through the records in his possession to determine the earliest date of use of said mark. This fact was discovered by counsel after the application had been filed and after several weeks of search material was disclosed which firmly convinced counsel that the alleged date of use was a long time prior to January 1st, 1900, whereupon a second application was filed showing the word "Spearmint" alone on the drawing. The Patent Office refused the registration of the mark as shown in the first application on the ground that the word "Spearmint" and not the spear was the distinguishing feature of applicant's mark and as said word "Spearmint" had not been used a sufficient length of time, according to the date disclosed in the first application, the same was erased from the drawing, with the understanding that no rights of the applicant would be waived if the mark was now registered merely as a spear."

Do you recall Mr. Offield's explanation?

A. I recall it now, yes, sir.

Q. Will you state to the Court, Mr. Wrigley, what records were discovered after several weeks of search, the disclosing of which led to the conviction that you had used this
914 mark prior to 1900? Now just tell us specifically what record?

A. Why, specifically, there was one show card we had and

another circular and in the second place Mr. Offield's question to me was—I can remember it distinctly—was "Have you used it since 1900?"

Q. You are not permitted to tell that—

Mr. Aldrich: I move to strike that out, as to any communication between himself and Mr. Offield when no one else was present. I am talking only of what occurred on this record, if the Court please.

The Court: Read the question.

(Question read.)

Mr. Offield: Records?

A. Yes, sir, records, a show card and a circular contained in our book, scrap book, a communication with people who were acting with me at the beginning.

Mr. Aldrich: Q. Was that all?

A. That is all.

Q. Now, the record of your testimony already in shows that at a certain time your gum was marked Wrigley's Spearmint Chewing Gum, and at a later time it was marked Wrigley's Spearmint Pepsin Gum?

A. Yes, sir.

Q. Now, when was that change made?

915 A. I can't answer that definitely.

Q. About when?

A. I can't even say about.

Q. Well, can you tell the year?

A. No, sir.

Q. Can you tell within two or three years?

A. Well, to go back twenty years, it would be a guess.

Q. I don't want any guess. If you can't tell, say so.

A. I can't tell definitely, no sir; That was a little detail. The name "Wrigley's" and the spear remained the same all the time.

Q. What connection did your changing from Wrigley's Spearmint Chewing Gum, which was the first, I believe, wasn't it?

A. You have the labels there.

Q. Well, what is your recollection?

A. I think it was "Chewing Gum" first and "Pepsin" afterwards.

Q. Yes, you are correct in that, as I understand it. Now I will complete the question I started. What connection did the change from Wrigley's Spearmint Chewing Gum to Wrigley's Spearmint Pepsin Gum have with your first sight

of the Pulver Spearmint Pepsin Gum, or afterwards the Digesto Spearmint Gum?

A. None.

Q. You just did that out of your own originality?

A. That was done before I eevr saw Pulver's package, as far as I know.

Q. You don't know when you did see Pulver's pack-
916 age, do you?

A. I know it was after we started to advertise our package.

Q. How did you come to drop "Pepsin"?

A. In later years?

Q. In later years?

A. Because we stopped putting pepsin in it and took the name off.

Q. And why did you stop putting pepsin in, if you know?

A. Why, I know because it was absolutely useless putting it in.

Q. What, if any, connection did it have with the Pure Food Law?

A. None.

Q. And if you have answered at any time that it did have a connection, why, you were mistaken at said times, were you?

A. I know the Government analyzed it and there was a general epidemic of hunting for pepsin in pepsin gum and most of it didn't have any in it.

Q. You couldn't find it?

A. You couldn't find it, no, and in order to be on the proper side I simply erased the word "pepsin" and stopped putting pepsin in.

Q. In did have some connection then with the Pure Food Law?

A. Yes, the Beeman people had the trouble with that. The theory that you can put a thousand grains of pepsin in a mass of gum and divide it up in a thousand pieces and get
a grain in each piece, it has been proven it couldn't be
917 be done.

Q. Now, can you look at a Red Book and tell me whether it is lithographed or just printed, as I understand your original books were?

A. I think I can do that, yes sir.

Q. And this Red Book, Number Seventh Edition, that I have here, is a lithographed Red Book, isn't it?

(Counsel hands a Red Book to witness.)

A. That is lithographed, yes, sir.

Mr. Aldrich: I will have this Red Book marked for identification Defendant's Exhibit 7.

(Thereupon a certain Red Book was Marked Defendant's Exhibit 7 for Identification.)

Q. Can you look at that Red Book and tell me when it was issued, Mr. Wrigley?

A. Not unless it has a date on it.

Q. Well, do all your Red Books have a date on?

A. No, I don't think—very few of them do. There have been two Red Books since that was issued, the eighth and ninth.

Q. Yes, we discovered that this morning.

A. I couldn't give the exact date but I should say at least six years ago.

Q. 1911, then? At least that long ago?

A. I should say so, yes. I would answer that from my knowledge of how often we get out a Red Book Catalog; 918 some times several years and sometimes—

Q. And all of the Red Books had this red cover?

A. Yes, this was a salesman's edition of the Red Book.

Q. Those that were sent out to customers were not bound with this leather cover?

A. No.

Q. But only with this red cover?

A. Yes.

Q. I understand from your bill in the second case that you first conceived of the Double Mint Package, July 27th, 1914. That is correct, isn't it?

A. About right, yes sir.

Q. Are you able to state when you registered your trademark "Double Mint"?

A. Shortly after that.

Q. In November some time?

A. I can't give you the exact date. My attorney has got that.

Q. Now, what did you base your claim on, Mr. Wrigley, made in your bill, that there was confusion between your Double Mint and the Wintermint?

A. Well, they were very similar; both flavored with peppermint.

Q. And with your large experience as a gum man you

thought that they were so similar that they necessarily bred confusion in the trade, did you?

A. I did at the time, yes, sir.

Q. You have not changed your mind since, have you?

A. No, sir.

919 Mr. Aldrich: That is all. Take the witness.

The Court: Have you any further examination?

Mr. Offield: Yes, your Honor.

The Court: Well, proceed.

*Redirect Examination by Mr. Offield.*

Now, in this so-called second suit the bill charges an infringement by the defendant of the Spearmint and the Double Mint packages. As between those three packages, the Spearmint, the Double Mint and the Wintermint package, in your opinion, is the Wintermint package closer in its appearance to the Spearmint or to the Double Mint?

Mr. Aldrich: To that I object, if the court please, because I think an analysis of the bill will show that there is no charge that it interferes or in any way infringes the Spearmint package.

Mr. Offield: I think an analysis will show exactly that, your Honor. That is the theory upon which this bill was drawn.

Mr. Aldrich: I object to it on that ground and I don't think there is any charge of that kind.

The Court: If there is any dispute as to what the bill contains, I will hear the evidence and rule on it afterwards.

920 Mr. Offield: Now, just read the question to the witness.

(Question read.)

A. It looks to me to be closer to the Spearmint.

The Court: What is the answer?

(Answer read.)

A. Referring to the counter-band.

The Court: Q. That is, the Wintermint is closer to the Spearmint than to the Double Mint, is that it?

A. Yes, sir.

Mr. Offield: Q. I show you the fifth edition of the Wrigley Red Book and ask you if you can state about when that first edition was printed?

A. The fifth or the first?

Q. The fifth edition.

A. I couldn't state accurately, no.

Mr. Aldrich: Well, you have not shown it to him yet.

Mr. Offield: Well, the date is in it, so I did not want to take any advantage of you, Mr. Aldrich, and show him the book with the date in it.

Mr. Aldrich: Where is the date shown in it, Mr. Offield?

Mr. Offield: Right here (indicating). I don't mean that it is a printed date.

Mr. Aldrich: It is a date that you have put in?

Mr. Offield: Yes, it is a date that the bookkeeper over there has put in.

921 Mr. Aldrich: I will want that.

Mr. Offield: Q. Can you state with any degree of accuracy as to the approximate time as to when any of the Red Books of the William Wrigley, Jr. & Company were printed?

A. I couldn't accurately.

Q. Please state why you could not give accurate testimony on that point.

A. Because I paid very little attention to that end of the business for many years.

Q. You have not had anything to do with the getting up of these books, have you?

A. No, sir, nothing at all.

Q. They are gotten up from time to time by other people in your employ?

A. Yes, sir.

Mr. Offield: I have all of these books, your Honor, that were called for by the subpoena duces tecum and I will put them in and prove them up by the right parties.

Q. Now, in 1906, you advertised Spearmint gum as the new flavor in that year, didn't you?

A. Yes, sir.

Q. And if you had used it from 1893 up to 1906, as you stated, why were you still advertising it in 1906 as a new flavor?

A. Because I considered it a new flavor as compared with the old standard wintergreen, peppermint and fruit flavors. It was the newest thing in flavor in chewing gums.

Q. So far as the public was concerned?

922 A. So far as the public was concerned.

Q. It was new to the masses, new to the public?

A. Yes, sir.

Q. I show you a specimen of Vassar Chewing Gum, and I

will ask you to state if that is the character of label as originally used by your company in 1892 or 1893?

(Counsel hands specimen to witness)

A. That is the old package used in 1892 and 1893.

Q. I will show you a stick of White Yucatan, and ask you if that is the conventional stick of White's Gum?

(Countel hands stick of gum to witness)

A. That is.

Q. And are these the two packages of gum, the two sticks of gum, as shown upon the circular that was exhibited to you by Mr. Aldrich?

A. They are, with the exception of the little counterband.

Mr. Offield: Have you got that circular, Mr. Aldrich?

Mr. Aldrich: Yes.

A. I would like to say in connection with that—

The Court: Here is one.

Mr. Offield: Have you got one right there, your Honor?

Mr. Aldrich: I have mislaid that.

A. —That originally all chewing gum was held together by a rubber band, when it was hand wrapped; that in
924 later years machinery was developed that wrapped the gum and placed a counter-band around it, which took the place of the rubber band.

Mr. Offield: The single stick of Vassar Chewing Gum is offered in evidence and marked Complainant's Exhibit Number 2 and the stick of White Yucatan is offered in evidence and marked Complainant's Exhibit Number 3.

(Thereupon said sticks of gum were marked Complainants' Exhibits Number 2, Number 3, respectively)

923 Exhibits Here Follow but Not Copied.

Q. I show you a package of Vassar Chewing Gum as manufactured by the William Wrigley, Jr. & Company, and ask you if that is the form of package in which the Vassar gum was marketed after the discontinuance of the rubber band?

(Counsel hands package of gum to the witness)

A. That is the form, yes, sir.

Mr. Aldrich: Will you allow me to see it?

Mr. Offield: Yes, sir. I ask that be marked as Complainant's Exhibit Number 4.

(Thereupon a certain package of gum was marked Complainant's Exhibit Number 4.)

Q. I show you a package of Juicy Fruit Chewing Gum, and will ask you if that is the manner in which that product has

been marketed by your Company since its first manufacture in 1893?

925 (Counsel hands package to witness)

A. That is the way in which Juicy Fruit, two stick, has always been wrapped. We also have a five-stick.

Mr. Aldrich: Have you a five-stick package there, Mr. Offield?

Mr. Offield: Juicy Fruit?

Mr. Aldrich: Yes.

Mr. Offield: No. No, I haven't a five-stick package. I ask that that be marked as Complainant's Exhibit Number 5.

(Thereupon a certain package of gum was marked Complainant's Exhibit 5)

Q. I show you two packages of Foil Wrapped Gum, one identified as California Fruit Chewing Gum, and the other as Adams Tuti-Frutti Chewing Gum, and I will ask you to state if those packages were upon the market prior to your Juicy Fruit Chewing Gum?

A. I think they were, both of them.

Mr. Offield: I ask that the California Fruit package be marked as Complainant's Exhibit Number 6 and the Tuti-Frutti package as Complainant's Exhibit Number 7.

(Thereupon certain packages were marked Complainant's Exhibits Number 6 and Number 7)

Q. I show you a package of Wrigley's Pepsin Chewing Gum foil wrapped, and ask you to state if that is the

926 form of label and manner of wrapping that was initially adopted by your company for their so-called pepsin gum?

(Counsel hands package to witness)

A. That was the original package.

Mr. Offield: I ask that be marked Complainant's Exhibit Number 8.

(Thereupon a certain package of gum was marked Complainant's Exhibit Number 8)

Q. I show you a package of Beeman's Peppermint Pepsin Gum and will ask you to state if that is the original Beeman's Chewing Gum that was upon the market prior to your pepsin chewing gum?

(Counsel hands package to witness.)

A. The original Beeman's was wintergreen. That was a later issue.

Q. Was the label—

A. More like this label (indicating).

Q. Was the label of the original Beeman's Pepsin Gum white?

A. Black and White.

Q. Black and white, as shown in the circular?

A. That was the wintergreen.

Q. And was it the light green, as shown on this peppermint package of Beeman's?

A. The light green was peppermint and the white and black wintergreen and the wintergreen was the original.

927 Mr. Offield: I ask that the Beeman's package of pepsin gum be offered in evidence as Complainant's Exhibit Number 9.

(Thereupon a certain package of gum was marked Complainant's Exhibit Number 9.)

Q. I show you a package of Wrigley's Nips, and will ask you to state if that is the form in which the Wrigley's Nips were initially put upon the market and if the Nips within the carbon are of the same color as the initial package?

(Counsel hands package to witness.)

A. They are, yes.

Mr. Offield: I ask that be marked Complainant's Exhibit Number 10.

(Thereupon a certain package of gum was marked Complainant's Exhibit Number 10.)

A. We also had black ones for licorice.

Q. I show you a package of Sweet-sixteen Chewing Gum, which is manufactured by your company, and I will ask you to state if that is the form in which your Sweet-sixteen has been marketed from the inception?

(Counsels hands package to witness.)

A. Yes, sir, it is.

Q. Both as to the shape of the pieces of gum and color of the label?

A. Yes, sir, it is, and the flavor.

928 Mr. Aldrich: Could you open that?

Mr. Offield: Yes, sir, I could.

Q. I show you a package of Kis-Me Chewing Gum, manufactured by the American Chicle Company, as appears upon the label, and I will ask you to state if that represents the Kis-Me Chewing gum that was upon the market prior to the introduction of your Sweet-sixteen?

(Counsel hands package to witness.)

A. Yes, sir.

Mr. Offield: I ask that the Sweet-sixteen package be

marked Complainant's Exhibit 11 and that the Kis-Me Package be marked Complainant's Exhibit Number 12.

(Thereupon said packages of gum were marked Complainant's Exhibit 11 and Complainant's Exhibit 12, repectively.)

Q. You are very positive, aren't you, that the Cassidy letter shown you under date of 9/15/1908, was not signed by you personally?

A. Yes, sir, I am.

Q. Why is it that you cannot give the names of any parties to whom Spearmint gum may have been sold by your company prior to 1904?

A. It is a very hard matter to remember the names of retailers to whom goods were sold twelve years ago and the sales of Wrigley's Spearmint, before it was advertised,
929 were not large enough to make it a factor in our business.

Q. How was the Spearmint gum sold, sold in individual boxes, or was it sold in the form of a flavor with assorted flavors?

A. It was sold with assorted flavors. We had what was known as assortments and those assortments were different, according to the different sections of the country into which the goods were shipped.

Q. You have been shown a package of Digesto Spearmint Chewing Gum and I will ask you to state if you have any recollection of ever having had a package of Digesto Gum or Pulver Gum called to your attention before the package illustrated on the catalog shown you and known as Digesto Spearmint?

A. Yes, sir, the first Digesto package I saw in Rochester was an all green package, Digesto Spearmint. It was put out by Pulver. I saw that before I ever saw this package (indicating).

Q. You testified you saw or heard of a Digesto package in the year 1907 or 1908 for the first time. What is your recollection as to that package? Was it the form of Digesto package which is exhibited in that circular?

A. No.

Q. Or was it of the same character?

A. The first Digesto Spearmint package I saw was
930 green and white letters shaded with black, green background.

Q. Can you state for approximately how long a period the white label was used that has been exhibited to you for your Spearmint gum?

A. Well, there has been a great many labels exhibited. Which do you mean?

Mr. Offield: Where is that label, Mr. Aldrich? Instead of referring to another label I have in this book—

Mr. Aldrich: What label is that?

Mr. Offield: Q. I show you the white label that you have heretofore testified was used about the same time you made the change from foil to pink label, and I will ask you to state if you know how long, approximately, the white label was used for the individual sticks of gum?

A. A very short time. I couldn't tell exactly.

Q. And at that time did you also use the pink label and the foil label at the same time the white label was used?

A. We used them all three at one time.

Q. There has been exhibited to you an advertising circular, published by the F. F. Pulver Company, or the Digesto Company, and afterwards republished by L. P. Larson, Jr. Company, entitled "A Little History", showing the various brands of chewing gum as upon the market before your various brands, and I will ask you to state whether or not you or the William Wrigley, Jr. Company was ever sued or ever
931 threatened with suit by any other gum manufactory for the alleged infringements of any labels, trade-mark rights or unfair competition, by reason of any package which appears upon that circular as having been manufactured by you or any of the companies with which you have been connected?

Mr. Aldrich: To which I object, if the Court please, as being immaterial.

The Court: Objection sustained.

Mr. Offield: Q. Have you manufactured Juicy Fruit Chewing Gum continuously and uninterruptedly since 1893?

A. We have.

Q. Have you manufactured Wrigley's Pepsin Gum continuously and uninterruptedly since its first manufacture in 1893?

A. We have.

Q. Have you manufactured Vassar Chewing Gum continuously and uninterruptedly since the beginning in 1892 or 1893?

A. Yes, sir.

Q. That is also true as to Sweet-sixteen?

A. It is.

Q. Is it also true as to Wrigley's Nips up to the time that you discontinued marketing the same?

A. We manufactured them until we quit, yes, sir.

Q. What year did you discontinue selling the Wrigley's Nips?

A. 1902, I should say.

Mr. Offield: That is all, your Honor.

932 Mr. Aldrich: Just a question or two, if the Court please.

*Recross Examination by Mr. Aldrich.*

Q. You have stated that at first all gums were put out with rubber bands around them because there was no machine to put on the counter-band?

A. I have said that what was known to the trade as penny-wrapped packages were originally fastened in bundles of five wrapped with a rubber band, when they were wrapped by hand.

Q. And was that ever true of the Spearmint also?

A. No, sir.

Q. Never put that out with rubber bands?

A. That was put out in foil wrapper.

Q. Didn't Oscar St. Louis send you some Spearmint in 1905 with rubber bands, that you had distributed in the South?

A. No, sir.

Q. When was this machine, which you have spoken of for wrapping the counter-band, first perfected?

A. I think along in 1898. I wasn't very closely interested in the manufacture then and I would not remember it.

Q. Then in answering Mr. Offield just now that you have continuously manufactured these gums why, you meant that you had continuously sold them?

933 A. And had them manufactured.

Q. Yes, and had them manufactured by the Zeno Manufacturing Company?

A. Yes.

Q. And you have said that this was a California Fruit stick gum?

A. No, I said it was a Juicy Fruit Gum.

Q. Juicy Fruit, two-stick. How was the five-stick wrapped?

A. Wrapped in paper, and we have it at the present time wrapped in foil.

Q. That was not the five-stick California Fruit was wrapped, as shown on this?

A. That is the way it was wrapped then but it is changed now. It is wrapped in foil now in single five-cent sticks.

Q. That is also true of Tuti-Frutti, isn't it?

A. Yes, they make both kinds.

Q. The one that is exhibited here is a two-stick package. We are talking about five-stick packages. How was the five-stick package marked?

A. Of this? (Indicating.)

Q. Of the Tuti-Frutti?

A. Wrapped in foil, as I remember it; five sticks in a foil wrapped package.

Q. The Beeman's produced, is the Beeman's Peppermint Pepsin Gum and not the one shown in this wrapper?

A. Not the first one that Beeman got out, as I recollect.

Q. Now, in the Pulver case, you did not testify that you had ever seen any other Pulver package than the one that 934 has been identified here as the Digesto package, did you?

A. I did not. That question was not asked.

Q. And did you advise your attorney that you had ever seen a package different from the Pulver package, or Digesto package that has been produced?

A. Probably I didn't.

Q. So that is new, the first time you have ever given testimony to that effect?

A. Yes, sir.

Q. Did I understand you to say that the Zeno Company made all of your gum up to 1911, when you took over the Zeno Company? Isn't that right?

A. That is right, with the exception of 1893, we had a few boxes made by an outside concern, when the Zeno could not fill the orders. I think the name of the man was Danheiser.

Q. Borg & Danheiser, was it? When did you manufacture, if at all, Yucca Gum?

A. I didn't manufacture it at all.

Mr. Aldrich: That is all.

935 WILLIAM SCATCHARD, called as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Offield.*

Q. Please state your name, age, residence and occupation.
A. William Scatchard; 48 years old; Philadelphia. I am Manager of the Philadelphia branch of William Wrigley, Jr. Company.
Q. How long have you been connected with William Wrigley, Jr. Company?
A. Well, I came to Chicago originally with Mr. Wrigley in 1891 and stayed with him in partnership until 1898, when I sold out to him, and I started in with him again in 1906.
Q. In 1908, you voluntarily retired from the partnership?
A. In 1898.
Q. In 1898 you voluntarily retired from the partnership?
A. Yes, sir.
Q. And you left your partner, Mr. William Wrigley Jr., in his old place of business under the old firm name and in entire charge of that business?
A. Yes, sir.
Q. And it was your intention that whatever good will or trade-marks were in that partnership, that those belonged
936 to Mr. Wrigley?
A. Yes, sir.
Mr. Aldrich: As to that I object, if the Court please. That is not any proof of it.
The Court: Well, it is too late. He has answered the question.
Mr. Aldrich: I didn't hear his answer.
Mr. Offield: The question is solely as to proving title in there.
Mr. Aldrich: I don't care about it on that basis.
Mr. Offield: Well, that is the only purpose in asking the question, Mr. Aldrich.
Mr. Aldrich: All right.
The Court: Go ahead.
Mr. Offield: Q. In what year did William Wrigley Jr. & Company, the copartnership, first begin the sale of chewing gum?
A. In 1892.

Q. Where was the business of that company located at that time?

A. 157 East Kinzie Street, Chicago.

Q. What chewing gums were sold by William Wrigley, Jr. & Company in 1892?

A. In 1892, the principal gums were Lotto, Vassar and Youcanchew. I think probably that is about all in 1892, that I recall.

Q. Now, when did William Wrigley, Jr. & Company, the copartnership, first place a chewing gum upon the market
937 under the name Spearmint?

A. In either 1893 or 1894. I am not sure as to the exact date but it was one of those two years.

Q. I show you a package of chewing gum marked Complainant's Exhibit Number 1, and ask you to state whether or not William Wrigley, Jr. & Company had a chewing gum product on the market which bore a label and wrapped in the manner as shown in this exhibit, in the year 1893 or 1894?

(Counsel hands package to witness.)

A. Yes, sir, they did.

Q. How are you able to fix the date when William Wrigley, Jr. & Company first placed a package of this kind on the market?

A. Well, in 1894 I went to Philadelphia to settle permanently and I know that we were selling that spearmint package before I went to Philadelphia, and had been for at least a year.

Q. That is, in 1894, you left William Wrigley in charge of this branch, the Chicago branch of the business, and you went to Philadelphia?

A. Yes, sir.

Q. And took charge of the Philadelphia branch?

A. And opened the Philadelphia branch of the same business.

Q. And after the year 1894 did you ever come back to the Chicago branch, as a permanent place of business?

938 A. No, sir.

Q. Now between the years 1894 and 1908, while you were a copartner in the firm of William Wrigley, Jr. & Company, was that company selling chewing gum, to your knowledge, having a label and wrapped in the manner as identified by Complainant's Exhibit Number 1, throughout that period?

A. That date was 1898 and 1908?

Q. I should say between 1894 and 1898.

A. Between 1894 and 1898, yes, sir.
Mr. Offield: That is all, your Honor.
The Court: Cross-examine the witness.

*Cross-Examination by Mr. Aldrich.*

Q. Have you been a witness in any of these cases before?
A. I gave testimony in Philadelphia before a Notary Public.
Q. In what case?
A. In the Pulver case, I think it was: I am quite sure it was in the Pulver case.
Mr. Aldrich: Did you furnish me a copy of his deposition, Mr. Offield?
Mr. Offield: I am just looking for it, Mr. Aldrich. I think I have it right here.
Mr. Aldrich: Well, under the order of Court I was entitled to a copy.
Mr. Offield: Well, may it please the Court, under the
939 order of this Court I don't understand Mr. Aldrich is entitled to a copy at all. The order of this Court was that I should loan Mr. Aldrich a copy of these depositions and a copy of this contract, for the purpose of enabling Mr. Aldrich to make up his mind whether or not he wanted to examine these witnesses that had been previously examined, and in pursuance of that order I gave him a copy of all these depositions.
Mr. Aldrich: Including Mr. Scatchard's?
Mr. Offield: I believe so.
Mr. Aldrich: I would not raise any question, Mr. Offield, on that. I haven't any such copy. At least I have not found it, but that makes no difference. We will pass on.
The Court: Let us get along. Any further questions?
Mr. Aldrich: Yes, if the Court please.
Q. When you first commenced business, you were in the soap business, weren't you?
A. Yes, sir.
Q. And when you adopted gum in the first instance as a part of your business you did that only as premiums with your soap, isn't that the fact?
A. No, sir.
Q. It is not?
A. No, sir.

Q. During the first years of your partnership you sold soap, didn't you?

A. Yes, sir, the first years.

Q. When did you take up that baking powder deal?

940 A. Why, in the same year, the latter part of the same year, 1891 and 1892, we sold baking powder.

Q. And that baking powder deal had a cook book connected with it, didn't it?

A. Yes, sir.

Q. You did not commence manufacturing any gum until after you got through with the baking powder and cook book deal, did you?

A. Not until after we were through with the cook book.

Q. That ran all through 1893, didn't it?

A. No, sir, not through 1893.

Q. And what time in 1893 did you commence to have gum manufactured for you?

A. Well, we had gum manufactured for us in 1892.

Q. I believe you occupied small premises at first that you rented from Puhl-Webb Company, didn't you?

A. Yes, sir.

Q. That was 157 Kinzie Street?

A. Yes, sir, 157 Kinzie Street.

Q. And Puhl & Webb were selling gum, weren't they?

A. Well, they were grocers specialty people and I imagine they sold gum, yes, sir.

Q. They had gum manufactured and sold gum?

A. Not that I recall, no, sir.

Q. When did you dissolve with Mr. Wrigley?

A. In 1898.

941 Q. And not before that?

A. No, sir.

Q. And if Mr. Wrigley has testified at any time that you dissolved in 1895, he was mistaken?

A. Yes, sir.

Q. What were your principal brands in 1898?

A. In 1898 we had Vassar and the pepsin gums, pepsin wintergreen and peppermint and Juicy Fruit. I imagine they were our principal brands; Juicy Fruit and the two pepsin gums and the Vassar were our Leading gums at the beginning.

Q. Did that continue until 1898?

A. Yes, sir.

Q. Well, when you went to Philadelphia were you still in the gum business or did you go into the soap business?

A. No, in the gum business.

Q. And have you been in the gum business ever since that in Philadelphia?

A. No, I started in with Mr. Wrigley again in 1906.

Q. Was the original partnership that you made with Mr. Wrigley in 1891 continued after the period named in the original partnership articles?

A. Well it was not continued as long as the original partnership articles.

Q. How long was the original partnership articles?

A. Ten years.

Q. And you were in only five years?

A. No, seven years.

Q. Well, in your previous testimony it would appear
942 that you were asked this question: "What were the names of the copartners?" And you answered "William Wrigley, Jr. and William Scatchard, Jr." "For how long were you a member of the copartnership?" "Five years." "What years were those?" "1892, 1893, 1894, 1895, and 1896, the beginning of 1896." Were you not so interrogated and did you not so answer?

A. Yes, I suppose I was.

Q. How do you explain now your date of 1898?

A. Well, I fixed the date of 1898 by the Spanish-American War, which was our idea in discontinuing the Philadelphia business. At that time we were compelled to put a revenue stamp on the gum and we thought it would add so much to the expense that we had better discontinue the Philadelphia office and that was our object in giving it up.

Q. Do you recollect Mr. John J. Cochran coming down there and making an audit of the Philadelphia business at one time?

A. No, sir.

Q. You were asked also—I refer to page 3 of your testimony—"When was the partnership between yourself and William Wrigley dissolved?" "In the early part of 1897," you answered. As that correct?

A. No, 1898.

Q. Well, you were so interrogated and you so answered?

943 A. Yes, sir.

Q. Did Mr. Wrigley buy you out or did you just have a dissolution of partnership?

A. He bought me out.

Q. How long were you in the soap business in Philadelphia before you got into the gum business?

A. In Philadelphia?

Q. Yes.

A. I was never in the soap business in Philadelphia, only to work for Mr. Wrigley's father for a year or two.

Q. And when was that?

A. That was in 1899 and 1900.

Q. Not after that?

A. No, sir.

Q. Well, I have been misled evidently by a statement in the Wrigley-Norris record, where it is stipulated that said William Scatchard is now engaged in the soap business, manufacturing Wrigley's soap, in the City of Philadelphia, Pennsylvania?

A. No, sir.

Q. That was incorrect?

A. Yes, sir.

Mr. Offield: What page is that of the Norris record, Mr. Aldrich?

Mr. Aldrich: Page 92.

The Court: Any further cross-examination?

Mr. Aldrich: Just a word. If I may just glance at this, your Honor, I have not seen it.

944 Q. The Spearmint gum didn't have any large sale, did it?

A. No, sir, not in the beginning.

Q. Up to what time?

A. Well, not while I was originally connected with Mr. Wrigley; not until 1898.

Q. It had not up to that time?

A. No, sir.

Q. It had not had any large sales?

A. No, sir.

Q. About how large were the sales, do you think?

A. Well, I couldn't tell you that definitely?

Q. So far as you know, it never had any large sales prior to the time that the advertising campaign was begun in 1906 or 1907, did it?

A. That is right.

Q. And it never appeared in the letter-heads or in the Red Books until after 1900, did it?

A. Well, the Red Books, of course, were published after I got away from Mr. Wrigley and I am not qualified to answer that question.

Q. You did not publish any Red Books up to the time you left then in 1898, as you now state?
A. No, sir.
Q. It did not appear on your letter-heads, did it?
A. I think not.
Mr. Aldrich: That is all, if the Court please.
Mr. Offield: There is no redirect examination, your Honor.

945 A. G. COX, called as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Offield.*

Q. Please state your name, age, residence and occupation.
A. A. G. Cox; Chicago; retired.
Q. How long have you lived in the City of Chicago?
A. 42 years, I think.
Q. When you first came here in what business were you engaged?
A. In the paint business.
Q. For how long a period were you engaged in the paint business?
A. Well, up to about nine years ago. That would be 32 years.
Q. Were you engaged in any other business besides the paint business?
A. The chewing gum business.
Q. When did you first become engaged in the chewing gum business?
A. June 2nd, 1892.
Q. With what company were you connected?
A. The Zeno Manufacturing Company.
Q. In June, 1892, you were connected with the Zeno Manufacturing Company as an officer?
A. I was the Manager. Well, it was the Rubber Paint Company, really that was in the chewing gum business.
946 Q. Now, when was the Zeno Manufacturing Company organized?
A. That was in '97 or '98, '96, somewhere along there. I can't give you the exact date.
Q. 1896, & 97 or '98?
A. Yes, sir.
Q. Prior to that time chewing gum was made by the Rubber Paint Company, as I understand it?

A. The Rubber Paint Company, yes, sir.

Q. Now, in the year 1892, did the Rubber Paint Company make any chewing gum for William Wrigley, Jr., & Company?

A. It did.

Q. Can you recall the flavors or the names of the gums that were made by the Rubber Paint Company for William Wrigley, Jr. & Company, in 1892?

A. The Lotto, and the Vassar, Youcanchew, I think those were the three brands in '92.

Q. When did the Rubber Paint Company first begin the manufacture of spearmint chewing gum for William Wrigley, Jr. & Company?

A. The last—about the last month of 1893 or the first of 1894.

Q. How do you fix the date?

A. Well, it was soon after the World's Fair and I had an idea of bringing out a spearmint gum myself and he beat me to it. That was about the size of it.

Q. I show you a package of Spearmint gum introduced in evidence and marked Complainant's exhibit Number 947 1, and I will ask you to state if that package, as to label and form of wrapper, represents the chewing gum package manufactured by the Rubber Paint Company for the William Wrigley, Jr. & Company in the latter part of 1893 or first part 1894?

(Counsel hands package to witness)

A. It does.

Q. Where were the labels made as appear upon the package, Complainant's Exhibit Number 1?

A. Made by R. J. Kittredge.

Q. Of Chicago, Illinois?

A. Of Chicago, Illinois, yes.

Q. How long did the Rubber Paint Company continue to manufacture a spearmint gum for William Wrigley, Jr. & Company?

A. Until they sold out the chewing gum business to the Zeno Manufacturing Company and then the Zeno Manufacturing Company continued until they sold out to the William Wrigley, Jr. Company.

Q. And in what year did the Zeno Manufacturing Company sell out to the William Wrigley, Jr. & Company?

A. 1910.

Q. And continuously, from the year 1893, or thereabouts,

—that is the latter part of 1893 or first part of 1894—you were connected with the Rubber Paint Company and with the Zeno Manufacturing Company throughout that period?

A. I was.

948 Q. And throughout that entire period the Rubber Paint Company or Zeno Manufacturing Company were manufacturing a spearmint chewing gum contained in a wrapper as identified by Complainant's Exhibit Number 1; is that correct?

A. Well, they changed it to a single wrapped. They continued until they finally brought out what we call double-wrapped gum.

Q. You refer to the change made from the foil wrapped package to the paper wrapped package?

A. Paper wrapped package, yes.

Q. In 1906 or thereabouts?

A. Yes, sir.

Q. During all of this period that the Rubber Paint Company and the Zeno Manufacturing Company were manufacturing chewing gum for the William Wrigley, Jr. & Company, were these companies also manufacturing chewing gum and selling it under their own name and under their own brands?

A. They were.

Q. So that was there any reason for keeping from the salesmen of the Zeno Manufacturing Company or the Rubber Paint Company the fact that one or both of these companies were manufacturing chewing gum for William Wrigley, Jr. & Company?

A. There certainly was and we kept it from the salesmen and from every one that was not personally engaged and had to be, from knowing that we were manufacturing the

949 Wrigley gum.

Q. What was your reason for so keeping it from the Zeno Manufacturing Company salesmen?

A. So that the Zeno salesmen would not say they were competitors of ours and they could not say we were manufacturing their gum.

Q. In other words—pardon me, go ahead.

A. And we did not want Wrigley's salesmen to say that we were manufacturing their gums either.

Q. Did the William Wrigley, Jr. Company buy chewing gum in considerable quantities from the Zeno Manufacturing Company?

A. In large quantities.

Q. Can you state about how large those quantities were, starting from 1892 or 1893?

A. I am afraid I can't give you the quantity. I did have the memorandum of it but I have forgotten now. It was in very large increasing quantities all the time.

Q. You signed the bill of complaint, didn't you, in equity suit Number 488, wherein it is alleged that the Larson Wintermint package is an infringement of the trade rights of William Wrigley, Jr. & Company?

A. I believe I did, yes, sir.

Q. You were the individual connected with William Wrigley, Jr. & Company who first called my attention to the Larson Wintermint package and who contended that in your
950 opinion that package was an infringement of the trade rights of your company, weren't you?

Mr. Aldrich: To that I object.

The Court: Objection sustained.

Mr. Offield: Q. Who had charge of the unfair competition end of the business of William Wrigley, Jr. & Company?

A. I looked after that.

Q. In the year 1911?

A. I looked after that.

Q. And is it, in your opinion, that the Larson Wintermint package, as introduced in evidence in this suit, is an infringement of either the Wrigley Spearmint package or the Wrigley Double Mint package?

A. I think it is.

Q. Of the two packages—that is, of the Spearmint package or of the Double Mint package, which package does the Wintermint product of the Larson Company more nearly resemble, in your opinion?

Mr. Aldrich: I am saving the objection, if the Court please, that there is no claim in the bill that it is an infringement.

The Court: I will make the same ruling, if there is a dispute about what is in the bill.

Mr. Aldrich: I just want it noted for the reason I do not want to pass it in silence. I will not note it again if it is understood that my objection is entered.

951 The Court: It may be so understood.

Mr. Offield: Now read the question, please.

(Question read)

A. Well, I should say the Spearmint.

Q. Isn't it a fact that the labels used upon the chewing gum products made for William Wrigley, Jr. & Company by the Zeno Manufacturing Company and by the Rubber Paint Company, that the purchasing of those labels and in some ways the designing of the labels themselves were performed by either the Rubber Paint Company or the Zeno Manufacturing Company?

Mr. Aldrich: They cannot put down a nod of the head?

Mr. Offield: What?

Mr. Aldrich: He nodded his head.

A. Well, I was a little bit in doubt.

Mr. Offield: Just answer the question.

The Witness: Let me hear that question again.

(Question read)

A. Yes.

Mr. Offield: Q. And from whom were the labels purchased for the Zeno Chewing Gum products and for William Wrigley, Jr. & Company products?

A. Largely from R. J. Kittredge & Company.

Q. Were the Spearmint labels purchased from R. J. Kittredge & Company?

A. They were.

952 Q. There was a fire in the factory of the Zeno Company, wasn't there, at which time the office properties of that company were largely destroyed?

A. Almost everything was destroyed, yes, sir.

Q. Do you remember in what year that was?

A. 1904, I think.

Q. Was the building destroyed?

A. The building was destroyed entirely.

Q. And what was recovered from that fire, if anything, in the line of records or other data?

A. Well, the books were in very bad shape and had to be recopied, and some of the records.

Q. What books were recopied, if you can recollect?

A. Well, we only recopied those that were necessary. I couldn't say just what books.

Q. Well, did the Zeno Manufacturing Company at the time of that fire have any vaults in their building?

A. I think not.

Q. And in what form of a receptacle were the records kept?

A. In a safe.

Q. About how large was that safe?
A. Well, it was a fairly good sized safe.
Q. And all of the records of the Zeno Manufacturing Company that you could get in that safe were kept there from time to time?
953 A. Yes.
Q. And the contents of that safe were intact, or were they impaired after the fire?
A. They were impaired.
Q. Is there any record in existence today that you know of that was in that safe and passed through the fire and is still in existence?
A. Well, I have not been close to the business lately. I could not answer that question. It seems to me there was, though.
Q. You have not been connected with William Wrigley, Jr. & Company for how long?
A. For over a year.
Mr. Offield: I would like to ask if the Court wishes me or if Mr. Aldrich will agree upon the record that the properties of the Zeno Manufacturing Company of every kind and nature were sold out to the Wrigley Company in the early part of the year 1910?
Mr. Aldrich: The transfer took place in 1911?
Mr. Offield: Yes, the transfer took place in January, 1911.
Mr. Aldrich: I concede that.
Mr. Offield: You concede that as to the trade-mark? That is all, your Honor.

*Cross-Examination by Mr. Aldrich.*

Q. Mr. Cox, that fire took place the last of December,
954 1904, didn't it?
A. It was the last day of December.
Q. 1904?
A. I think it was.
Q. Yes, that is my understanding.
A. Or—Yes—
Q. That is right, I am sure. Now, you have testified that from the beginning the sale of Spearmint gum was in increasing quantities right along; is that right?
A. I think he asked me the chewing gum I sold Wrigley.
Q. Oh, that you sold Wrigley?

A. Yes.
Q. Oh, you did not mean that to apply to Spearmint then, did you?
A. Not particularly. They were all increasing.
Q. Now, let us confine ourselves to Spearmint. What have you to say about whether the sales of Spearmint from the time you commenced were increasing right along?
A. Well, we kept selling them. I only know we got the orders, that was all, and filled them.
Q. What amount of orders?
A. Well, I couldn't give you the particulars, the amount.
Q. Would you say that the Spearmint gum met with great favor, or there was any sale for it, or you had occasion to manufacture any considerable amount of it prior to the advertising campaign at the end of 1906 or beginning of 1907?
A. Well, they sold it with their other gums, you know, assortments.
Q. Any considerable quantity of it, Mr. Cox?
955 A. Well, I thought there was considerable. I don't know just how much.
Q. Have you any memory on that subject?
A. I haven't no.
Q. Now, have you any distinct memory of making any Spearmint gum or selling any prior to 1900?
A. I—
Q. Now, just your memory?
A. 1893 and '94 was when we commenced. Yes, I have a distinct memory.
Q. Well, you mean you made an experimental batch, Mr. Cox, of something, trying to get a flavor and that you failed or that you made something that you continued to sell as a commercial product?
A. That is what I mean, yes, sir.
Q. That you continued to sell as a commercial product?
A. Yes, sir.
Q. Who made the gum?
A. Mr. Buck was superintendent of the factory. He looked after that part of it. I didn't make it.
Q. Where did Paul Nelson come in.
A. Paul Nelson was Mr. Buck's assistant.
Q. Paul Nelson was the gum maker until 1906, wasn't he?
A. Mr. Buck knows more about that then I do.
Q. Don't you know that?

A. I know he was Mr. Buck's assistant there, I think from the beginning.

956 Q. And didn't he make the gum until 1906?

A. I couldn't say.

Q. And didn't he then become superintendent of the factory in 1906?

A. No, I don't think he was superintendent of the factory. Mr. Buck was superintendent, in 1906, was superintendent, up to the—

Q. And did Paul Nelson ever become superintendent?

A. Why, he was assistant to Nelson Buck. He was Nelson Buck's assistant. You might have called him superintendent, but he had no—

Q. Now, Mr. Cox, you have testified in this case before, haven't you?

A. Yes, sir.

Q. Haven't you testified that Paul Nelson became superintendent in 1906?

A. I don't remember?

Q. Well, you have seen Paul Nelson used as a witness in such cases, haven't you?

A. Yes, sir.

Q. And aren't you aware that he has so testified?

A. Perhaps he has.

Q. Now, when Paul Nelson became superintendent, if we assume he did, in 1906, who became your gum maker?

A. I couldn't say.

Q. Didn't Grzontowski become your gum maker?

A. What is that name?

Q. Grzontowski?

A. I never heard the name before that I know of.

957 Q. Bernard Grzontowski?

A. I had very little to do with the employes of the factory. Mr. Buck attended to that.

Q. And didn't he continue as your gum marker until 1913?

A. That I don't know.

Q. Now, in the Norris record I find this answer by the Wrigley Company—

Mr. Offield: What page, Mr. Aldrich?

Mr. Aldrich: Page 18.

Mr. Offield: 18?

Mr. Aldrich: 18, yes. "That from the year 1894 to about January first, 1906, the said chewing gum product 'Spearmint' has been continuously sold by this defendant, but that during

said time the said product did not meet with general favor by the purchasing public; that about January 1st, 1906, this applicant entered into contracts for an extensive advertising campaign throughout the United States for making known to the purchasing public their product "Spearmint"; does that enable you to say now whether you were manufacturing Spearmint gum from 1894 to 1906, in increasing quantities or not?

A. I could not give you the quantities but I know we manufactured it during that time.

Q. Well now, you have said something about keeping it secret that you manufactured Wrigley's gum. From whom did you keep it secret?

958 A. From every one except those that it was necessary to be informed.

Q. Well, the employes like your bill clerks knew that you were making Spearmint, didn't they, if you were making Spearmint for Wrigley?

A. Very few of my employes knew it, very few.

Q. Well, your bill clerks who billed out your gum products to Wrigley knew it, did they Mr. Cox?

A. The ones that did the billing knew, yes sir.

Q. Yes, first Mrs. Constantine, and afterwards Miss Adams. Is your recollection refreshed by particular names? They knew you were billing goods to Wrigley Company, didn't they?

A. I think at that time they were billed in Number So and So. We had them numbered. We had an arrangement with the factory so as to keep it as free from people knowing it as possible; assortments, number 1 assortment, number 2 assortment; that is my recollection at the present time.

Q. Well, such a man as your sales manager would know what you were manufacturing for Wrigley, wouldn't he?

A. I didn't have any in those days. I was my own sales manager.

Q. When was it that Mr. William H. Constantine became sales Manager?

959 A. Why, he was really my assistant and along the latter part, up to 1910, somewhere along there, he was my assistant, but he was really more of a salesman than anything else. He looked after the soap business.

Q. Did you keep quiet the fact that you were billing any gum to Wrigley, or just Spearmint?

A. No, I kept the thing as quiet as possible and only those that I could trust knew.

Q. That is, from your salesmen?
A. From my standpoint, yes.
Q. From your salesmen?
A. My salesmen had nothing to do with it. They particularly must not know.
Q. I understood you to assign your reason for secrecy that you did not want your salesmen to know that the Wrigley gum, which was in competition, was made by the same firm?
A. I did not want any one to know, that we was not obliged to bring into it.
Q. Well, if you know, you were connected with Wrigley financially also at that same time, weren't you?
A. As—Yes, selling goods.
didn't you?
Q. Yes, and you also had financial interests together
A. We did not.
Q. I have understood that he was a stockholder in your company prior to the sale?
A. No. Oh—No, he had no interest in our company.
960 Q. Well, you billed these products, whatever they were, to Wrigley, as gums, didn't you?
A. These what?
Q. The products that you manufactured for Wrigley, you billed them to him as gums, didn't you?
A. Yes, I suppose so.
Q. They were gums, weren't they?
A. Yes, chewing gums.
Q. Yes, chewing gums?
A. Yes.
Q. But you think you did not disclose the label?
A. I think they were billed as assortment. That was my impression, my recollection, at least.
Q. Now, you have said that you regard this package of Wintermint as more nearly infringing the Spearmint package than the Double Mint package, as I have understood you?
A. Yes.
Q. Do you think that there would be confusion on the part of the buying public between the Wrigley Double Mint and the Larson Wintermint?
A. There might be.
Q. Well, you verified the bill in this case, didn't you?
A. Yes.
Q. You said there would be?
A. Yes.

Q. You said there was, in fact, didn't you?
A. Yes, I think it is an imitation of both of them.
Q. And you based it largely on the fact that the indi-
961 vidual sticks were wrapped in green, didn't you?
A. Not particularly.
Q. That was one point you made?
A. The color scheme is the same.
Q. And the color scheme includes the individual sticks wrapped in green, doesn't it? The color scheme includes the fact that the individual sticks were wrapped in green?
A. The red and green and white particularly makes it look as though it would pass—
Q. The green, yes.
The Court: Q. Do you think a man who wanted Spearmint gum would be deceived into taking Larson's Wintermint?
A. Well, they might be.
Q. I didn't ask you what might be. Do you think, suppose a man or woman or anybody wanted Wrigley's Spearmint and should go to a store with the expectation and desire and intention of getting Wrigley's Spearmint, do you think he might be deceived by seeing a bunch of Larson's Wintermint into thinking he was getting Wrigley's Spearmint?
A. I know of instances of that kind, the people couldn't read writing off-hand, might be deceived.
Q. I am talking about—do you know of any case where any purchaser went into a store or place where Wrigley's
Spearmint is ordinarily kept or sold, or chewing gum is
962 kept or sold, who wanted Wrigley's Spearmint and had palmed off on him Larson's Wintermint? Do you know of any cases of that kind?
A. I don't know of any particular cases, no.
Q. As far as you know that never occurred?
A. I don't know of any particular instances.
Mr. Aldrich: Q. But you still think that the Double Mint and the Wintermint packages are so alike that they would be confusing to the trade, ordinary purchasers, do you?
A. Well—
Q. Just say yes or no.
The Court: Q. What do you say to that, yes or no?
Mr. Aldrich: Q. Yes or no?
A. Well, I can't hardly answer it by saying yes or no.
The Court: Q. Do you mean if—
A. If I could explain it.
Q. Do you mean to say if a would-be purchaser wanted

Wrigley's Double Mint gum and would go into a place to get it, having in mind that he wants Wrigley's Double Mint, that the storekeeper, or whatever it is, could palm off Larson's Wintermint on him?

A. Ordinarily no.

Q. Well, ordinarily, you mean by anybody who could read or see or do anything he wanted; is that what you mean?

963 A. Well, it would be—ordinarily not is as far as I can go.

Mr. Offield: You have got to take into consideration, your Honor, the thousands and thousands of careless buyers.

The Court: Careless buyers, I know, but a man has got to be deceived into getting something he does not want.

Mr. Offield: He has in mind what he wants but passes by an ill-lighted counted—

Mr. Aldrich: I will just close this branch of it, if the Court please, by Mr. Offield and I conceding that these two packages do bring confusion.

Mr. Offield: I don't concede anything at all.

The Court: That is for the purpose of your counter-claim.

Mr. Aldrich: Yes, sir. They have averred there is confusion and we have admitted it in our answer.

The Court: Now, then, this sort of a case rests on the proposition that the defendant has so dressed up his goods as to deceive the public and make the public, when they come to buy the complainant's goods, take in place thereof, by mistake, the defendant's. That is the theory.

Mr. Aldrich: That is the theory of this case.

The Court: Surely that is the theory of this kind of a case.

Mr. Aldrich: Yes, sir.

The Court: So that when an ordinarily intelligent per-

964 son, if an ordinarily intelligent person uses chewing gum, wants the Wrigley Double Mint and knows he has got sense enough to know what he wants, the ordinary customer goes into a place and asks for Wrigley's Double Mint or Wrigley's Spearmint and he is liable to be deceived by being handed some of Larson's Wintermint.

Mr. Aldrich: That is the theory of their bill. And if the Court please, I want to say in addition to that that sometimes a dress has been so long used, or been used, and is dressed so distinctively that people without stopping to read just see what they think is that dress and reach out for it and lay down their nickel and take that package. And then if the two pack-

ages are so alike they might find they have got a package other than the one they expected to get.

The Court: Then the trade is supposed to wait on themselves?

Mr. Offield: They do in many instances.

Mr. Aldrich: They do in many instances, your Honor. They are on the cigar stands and so forth when they lay down their nickel and reach in and get it. That is right, isn't it?

Mr. Offield: Yes.

The Court: So a man is liable to deceive himself by waiting on himself?

965 Mr. Aldrich: That is the theory of their bill.

Q. Now, Mr. Cox, when you verified the bill in this case, Double Mint Bill 488, you recall that you stated that it led to confusion, these two packages, didn't you?

A. I presume likely. I have read the bill recently.

Q. Yes. Well, now, there is another passage in the bill that I would like to have you tell the Court what you mean by it, if you have any explanation to offer. It is Paragraph 6 of this bill verified by you, in which you state:

(Counsel reads paragraph 6 referred to.)

Now, in view of that statement that they cannot be easily distinguished because of the green wrapper of the Double Mint and the Spearmint, because of the green wrapper for the individual sticks, I would like to have you explain to the Court why this would not be easily distinguished.

(Counsel hands package to witness.)

The Court: What is this?

Mr. Aldrich: The Wintermint. Thank you, your Honor. I hand the witness the Wintermint package.

The Court: Answer the question.

A. Well, it wasn't that part particularly that I objected to.

The Court: I didn't hear the answer.

(Answer read.)

The Court: You mean it is the resemblance?

966 A. It is the colors on the labels.

Q. Do you mean it is the resemblance when it is against you and it is the difference when it is for you?

A. Oh, no, no, indeed. The outside has the same colors.

Mr. Aldrich: Q. That is true also of the Double Mint and the Spearmint?

A. And the Spearmint, yes.

Q. And they both have spear heads on while the Winter-

mint product has not and yet you say the Double Mint and the Spearmint are readily distinguishable?

A. The what?

Q. The Double Mint and the Spearmint are readily distinguishable, didn't you say?

A. Yes, I can tell them apart.

The Court: What was his answer?

Mr. Aldrich: He says yes, their Double Mint and Spearmint are readily distinguishable.

Q. Now, Mr. Cox, there has been marked for identification here certain letters passing between William Wrigley Jr. Company in May and June of 1914. Were those letters called to your attention at the time?

A. What are they? I have not seen them.

Mr. Offield: Show him the exhibits, Mr. Aldrich.

Mr. Aldrich: The first letter is the letter of May 29th, 1914, and then the next one is the one right over this,
967 the answer to it from your firm or corporation, and the next is the reply to it.

(Counsel hands documents to witness.)

The Court: What is the question about these letters, whether he recollects them?

Mr. Aldrich: Read the question.

(Question read.)

The Court: What answer do you make?

A. I don't remember.

Mr. Aldrich: Q. You have a notice to produce the letters that were sent you in a letter of June 3rd. Have you produced them?

A. I have.

Q. Yes.

A. I don't remember getting any such notice.

Mr. Offield: This is not J. C. Cox, Mr. Aldrich.

A. I am not the Cox it refers to there. I don't know anything about it.

Mr. Offield: This is A. G. Cox.

Mr. Aldrich: Yes, I understand this is A. G. Cox.

Q. They were not called to your attention?

A. I have retired. I am not in the business now.

Q. You are not in the business now?

A. No, I am not in the business now.

Q. I want to show you this recommendation, the letter
968 of Cassidy, and ask you by whom of your firm it was signed, your corporation?

(Counsel hands document to witness.)
A. I couldn't say. I never had anything to do with the salesmen or that part of the business at all.
Q. It comes from your house?
A. William Wrigley Jr. Company, yes.
The Court: Is there any redirect-examination?
Mr. Offield: Just one question or two.

*Redirect Examination by Mr. Offield.*

Q. You have known Mr. Wrigley's signature for a great many years, haven't you Mr. Cox?
A. I have, yes.
Q. Is that Mr. Wrigley's signature on that letter?
(Counsel hands document to witness.)
A. No, sir.
Mr. Offield: That is all your Honor.

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969 O. J. BUCK, called as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Offield.*

Q. Please state your name, age, residence and occupation.
A. O. J. Buck; 64 years old; retired.
Q. Were you at one time connected with the Rubber Paint Company and, if so, when?
A. I have been connected with the Rubber Paint Company since 1887.
Q. At any time while you were connected with the Rubber Paint Company did it manufacture chewing gum?
A. We began the manufacture of chewing gum in 1892.
Q. Whereabouts did you begin the manufacture of it in 1892?
A. 154 and 156 West VanBuren Street, old numbers.
Q. Did you manufacture for the Rubber Paint Company or for other parties at that time, or for both?
A. We manufactured for the Rubber Paint Company and for other people under their own brands.
Q. In the year 1892, did you manufacture any chewing gum for William Wrigley, Jr. & Company?

A. We did.

Q. What brands of gum did you manufacture for that company in that year?

A. We manufactured Vassar, Smyrna, Youcanchew; that is about all I remember of '92.

970 Q. In what year did the Rubber Paint Company manufacture any Spearmint for William Wrigley Jr. & Company?

A. We started to manufacture early in 1894.

Q. I show you a package of chewing gum, marked Complainant's Exhibit Number 1, and ask you to state if you made Spearmint chewing gum and wrapped the same in a counterband of tin foil, as evidenced by this exhibit, in 1894, for the William Wrigley Jr. Company?

A. We did.

Q. How long did the Rubber Paint Company continue to manufacture a Spearmint chewing gum with a counter-band, wrapped in the manner as evidenced by this exhibit, for William Wrigley Jr. & Company?

A. I couldn't state definitely the number of years we manufactured it and wrapped it in that label, as I was in the factory—

The Court: If you cannot remember, that is all. We cannot take up time about the reasons.

A. All right.

Mr. Offield: Q. What was your position in the business of the Rubber Paint Company in 1894?

A. General superintendent.

Q. And for how long a period were you the general superintendent of the Rubber Paint Company?

A. Until we sold out.

971 Q. And what year was that?

Mr. Aldrich: We concede it was January 1st, 1911.

Mr. Offield: Oh, no, this is the Rubber Paint Company.

A. I don't know when.

Q. About when?

A. I don't know that I can name the year.

Q. Well, can you give approximately the year?

A. Well, sometime in 1908 or 1909, or 1910, somewhere along there.

Q. Now, during that period from 1894 to 1908, 1909 or 1910 did the Rubber Paint Company continuously manufacture a Spearmint chewing gum for William Wrigley Jr. & Company?

A. We manufactured for them up to the time we organized or incorporated the Zeno Manufacturing Company.

Q. And what year was that, or about what year?

A. About 1907, I think.

Q. And during that whole period you had the general superintendence of the manufacture of chewing gum of the Rubber Paint Company and the Zeno Manufacturing Company?

A. I did.

Mr. Offield: That is all, your Honor.

*Cross-Examination by Mr. Aldrich.*

Q. Mr. Buck, you have been examined before as a wit-
972 ness in reference to the time when you commenced to manufacture gum for William Wrigley, haven't you?

A. Why, I think I have testified.

Q. What?

A. I think I have testified at a previous time.

Q. And in what cases?

A. I think it was in—It was in an office before a Notary Public, I think.

Q. Well, to save time, you were examined as a witness in the DuWane Norris interference case, weren't you, in the Patent Office?

A. Well, I don't just recollect who the defendant was.

Q. And were you examined as a witness in the Pulver case?

A. I was examined as a witness in a case but I don't remember the name of the defendant.

Q. And how are you able now to fix a date as to when you commenced to manufacture Spearmint gum?

A. Well, I had full charge of the manufacture, bought all the flavors and did all the mixing.

Q. What date did you say it was?

A. About 1894.

Q. 1894?

A. Early in the year 1894.

Q. Do you recollect being asked in the Du Wane Norris case: "About what year was the Rubber Paint Co. manufacturing a spearmint flavored gum for William Wrigley Jr. & Co., that is, when did they first begin to manufacture
such a gum, to your knowledge?" "A some time between
972 the year of 1892, the latter of the year 1892 and 1895, I should say." Were you not so interrogated and did you not so answer?

A. It might be that I answered in that way, yes, sir.

Q. Now, what has occurred since then to enable you to fix a date more definitely?

A. Well, it seems to me one answer is about the same as the other.

Q. All right. And what is the reason that you cannot give exact dates?

A. 1892 and 1894 are quite a long distance back.

Q. I did not refer to that. I expected you to answer something about a fire.

A. Oh.

Q. Does that refresh your recollection?

A. Our factory was burned down December 31st, 1904, I think, and burned up all our records.

Q. Yes, that is correct.

A. Or practically all our records.

The Court: 1904?

Mr. Aldrich: 1904, yes.

A. December 31st, I believe it was.

Q. Now, Mr. Buck, are you here to tell the Court that your books were destroyed in that fire?

A. All of my records were destroyed.

973 Q. What are your records?

A. Well, my records were in regard to the flavors and so forth.

Q. Don't you know that the journals and ledgers were not destroyed?

A. I know that we had some very badly damaged books in the office that came out of the safe.

Q. Don't you know that they were wet with water and that for many days around the office they were laid out around the office with blotters between drying them?

A. That may have been the case.

Q. Well, what became of those damaged books that were not destroyed?

A. I don't know anything about the books in the office. I paid no attention to the office.

Q. Well, you were superintendent there, weren't you?

A. Superintendent of the factory only; not of the office.

Q. Do you recollect Paul Nelson?

A. I remember Paul Nelson.

Q. And how long did Paul Nelson mix the gum in your factory?

A. He mixed the gum for a good many years. I don't know that I can tell you for exactly how many years.
Q. Up to 1906, didn't he?
A. Possibly, yes.
Q. Do you recollect a man by the name of Bernard Grzontowski?
A. We never had a name on our books—we never had a man on our books by the name of Bernard Grzontowski.
Q. And he mixed gum from 1906 to 1913, didn't he?
A. I say we didn't have a name on our books by that name.
974 Q. You know the man I refer to, a man named Jordan?
A. We had a man named Bernard Jordan that mixed some with Paul Nelson.
Q. That was just a name you had given him in the factory because his real name was so difficult to pronounce, isn't it?
A. I couldn't testify as to his real name. If that is not his real name, that is the name we knew him under.
Q. He was not a discharged employe, was he?
A. I don't remember whether we discharged him or not.
Q. Don't you remember about the failure of his health and going out to get open air employment, in 1913?
A. I think that he went out and went on a delivery wagon.
Q. Went into the grocery business, didn't he?
A. On some delivery wagon. That is about all I know about it.
Q. Well, you remember he was there, don't you?
A. Yes, sure, I remember Bernard Jordan was there in the factory.
Q. And you recollect he was the gum mixer, don't you?
A. He mixed the gum under Nelson.
Q. Now, you have testified to making Spearmint gum prior to 1902?
Mr. Offield: I beg pardon. I object to that.
Mr. Aldrich: Prior to 1902.
Mr. Offield: There is no testimony to that effect in any
975 of Mr. Buck's depositions, prior to 1902—oh, prior to 1892, I beg pardon.
Mr. Aldrich: No, 1902. I am correct.
Mr. Offield: That is correct. I was thinking of 1892.
Mr. Aldrich: Q. Now, isn't it a fact that the gum made in 1902 was experimental, an attempt to get an experimental flavor that would meet with favor by the public?
A. No, sir, it is not a fact.

Q. You made a great many experiments, didn't you?
A. We did.
Q. With spearmint?
A. With spearmint flavors, yes.
Q. And when did you make them?
A. Oh, we made them from time to time as we thought we could improve the flavor.
Q. And when was that?
A. But the spearmint flavor that was put into the chewing gum was not an experimental flavor:
Q. It was spearmint oil, wasn't it?
A. Spearmint oil.
Q. Yes, but before you could make spearmint gum that you could offer commercially or advertise, you had been experimenting, hadn't you?
A. We made a spearmint chewing gum right along from the time we started.
Q. Now, Mr. Buck, you are too intelligent a man not to answer that question yes or no.
Mr. Offield: I object, your Honor.
A. I am telling the truth, that we made spearmint gum 976 from the time we started until I retired.
Mr. Aldrich: Q. For commercial purposes?
A. For commercial purposes, yes, sir; from the time we started making spearmint chewing gum we continued to make it.
Q. Now, for whom did you make spearmint gum?
A. William Wrigley Jr. & Company.
Q. Anybody else?
A. No, sir.
Q. Now, at page 46 of the DuWane Norris record you tell about these experiments: "What purpose for your own informations was had in view in the manufacture of spearmint gum and not sending it out?"
"A. In order that we might determine the exact quantity of spearmint to be used in a chewing gum to get the very best flavor possible." "When was that done?
A. Oh, possibly every day for a week or a month we would make a small batch. We had what we called experimental batches that were made with different proportions of flavors.
Q. That was spearmint, was it?
A. Well, spearmint or any other flavor that we wanted to experiment with.
Q. I am only examining you about spearmint now. When

was it that you made these experimental batches of spearmint?

A. We made them off and on all the time.

Q. Well, what year?

A. 1904, and 19—1894 and 1895 and 1896 and 1897. We kept experimenting all the time.

Q. And for whom?

977 A. For William Wrigley Jr. & Company on spearmint.

Q. Well, I am only asking you about Spearmint?

A. Yes.

Q. You were also asked in this record: "When was that done?" And you answered: "From time to time, as we were working up the flavor for Spearmint gum and as we got in new shipments of oil, in order to test the actual working of the flavor in the manufactured article."

You were also asked: "Can you state how many of such experimental specimens of spearmint gum were made by you?" "I have no record of the number." "Can't you state it without a record, approximately?" "It would be impossible to state it."

You were asked then: "Is that on account of the fewness or the great number of the specimens?" And you answered: "We in our business are making specimens continually;"

You were so interrogated and you so answered, didn't you?

A. That is correct, yes, sir.

Q. Now, you have ben talking about the Rubber Paint Company and the Zeno Manufacturing Company. As I understand it, the Rubber Paint Company was engaged in the paint business?

A. That is correct.

Q. And before you organized the Zeno Manufacturing Company you used that name without any corporate or-
978 ganization under which the gum business was conducted; isn't that right?

A. We sold gum under that name.

Q. Yes, and before there was any corporate organization?

A. As a chewing gum company.

Q. Yes, as a chewing gum company, and then you organized the Zeno Company at what time?

A. Well, I couldn't state the exact date but it is, I should judge, along about 1907. It is a long time ago and I haven't paid much attention to that date since.

Q. You did not attempt to keep the fact that you were

making gum for Mr. Wrigley from William H. Constantine, did you?

A. I had nothing to do with Mr. Constantine.

Q. And did you keep it from Mr. Dissor, L. J. Dissor?

A. I don't know Mr. Dissor. At least I wouldn't know him by that name.

Q. He worked for you at one time, didn't he?

A. I don't remember the name.

Mr. Aldrich: That is all.

*Redirect Examination by Mr. Offield.*

Q. It is customary in the chewing gum business to make experimental batches practically continuously in the manufacture of gum, isn't it?

978 A. We made experiments all the time, both in the making of the gum and making of machinery to make the gum, and in every other way that would help our business.

Q. And it is customary to make up a batch of gum with a new shipment of oil that comes in, to test out the character of oil, isn't it?

A. An experimental batch. We had a regular experimental batch that we used for this purpose.

Q. And that is made up for the purpose of determining whether or not like batches that would follow would be suitable for commercial purposes?

A. Yes, sir.

Mr. Aldrich. Mr. Offield, when do you understand the Zeno Company was organized as a corporation?

Q. When was it, Mr. Buck?

A. Well, I can't state exactly when it was put in operation.

Q. About when?

A. I have not fixed that date in my head, sir.

Mr. Offield: July 20, 1907.

Mr. Aldrich: That is all.

The Court: Call your next witness.

979 R. J. KITTREDGE, called as a witness on behalf of the complainant, having been first duly, sworn, testified as follows:

*Direct Examination by Mr. Offield.*

Q. Will you state your name, age, residence and occupation?

A. R. J. Kittredge; president and manager of R. J. Kittredge & Company; 57 years old; lived in this city forty-six years.

Q. Your occupation?

A. Printer of labels and color work generally.

Q. For how long have you been engaged in the business of printing labels and color work generally?

A. Since 1886, I think, or '85.

Q. In the City of Chicago?

A. Yes, sir.

Q. Where is your present place of business?

A. Corner of Green and West Superior Streets, Chicago.

Q. Did you ever make any chewing gum labels for the Rubber Paint Company?

A. Yes, sir.

Q. When?

A. Ever since they brought that business to Chicago.

Q. What year was that, do you recollect?

A. About 1891 or '92.

Q. Do you remember the names or the brands of chew-
980 ing gum on any labels you may have made for the Rubber Paint Company in 1891 or 1892?

A. Yes, sir.

Q. Please state what they are.

A. There was practically all flavors, the same as are used now by different gum makers under the name Zeno. There was Zeno Forbidden Fruit, and Zeno Licorice and Zeno Pepsin and Zeno Peppermint, Blood Orange, Lemonade and Lemon Cream.

Q. And did you make any labels for the Rubber Paint Company, upon which labels appeared the name William Wrigley Jr. & Company?

A. Yes, sir.

Q. As early as the year 1892?

A. Well, it was soon after that, '92, or '93.

Q. Can you remember the names of the brands of any of the chewing gums upon which you made the labels for the Rubber Paint Company bearing the name William Wrigley Jr. & Company, in 1892?

A. Well, there was Vassar and Youcanchew. In 1892 was it, you said?

Q. Yes.

A. Vassar, Youcanchew. There was several other lots we had in there that I don't recollect all the names, and then we made the Spearmint and box labels and bands for Juicy Fruit. We didn't make the labels for that then.

981 Q. In what year did R. J. Kittredge & Company first make a label for the Rubber Paint Company bearing the name William Wrigley Jr. & Company, for a spearmint flavored chewing gum?

A. That was in 1893, the last of 1893 and the beginning of 1894.

Q. How do you fix that date?

A. It was during the Chicago World's Fair and we were doing work for the Rubber Paint Company in connection with this, or at the same time, and this was put off, I know at one time, in favor of some Zeno work they wanted to use in the slot machines out at the Fair. We got up the sketches and made several of them, lead pencil sketches, and in several different ways, and they were not approved. They were sent back and not what Mr. Wrigley wanted. Mr. Smith brought them in and showed me a pencil layout of about the way they wanted the spear arranged with the word "Spearmint" across the middle of it, and we prepared a sketch in that manner which was approved, and plates were made and I think we made fifty thousand wrappers on the first order, fifty or a hundred thousand. I know it was not a very large order. It was green and red with a white background and a little border around it and on one of the panels was a ruled background. It was a single faced wrapper at that time for a foil package.

982 Q. I show you a label upon a package of chewing gum identified as Complainant's Exhibit Number 1, and I will ask you to state if that was the label, or if a label similar to that, was made by R. J. Kittredge & Company in the year 1893 or first part of the year 1894?

(Counsel hands package to witness.)

A. This is the original style and arrangement of the design.

Q. Can you state whether or not that is one of the original 1893 or 1894 labels?

A. I couldn't swear to that because we made them for quite a while after that without any change.

Q. But you are positive that that label was made by your company practically as it stands there, in the year 1893, or first part of the year 1894?

A. I am.

Q. Now, how long was that label produced?

The Court: You don't mean this particular label? You mean one like it?

A. One as near like it as I can recollect. I think there is some peculiarity about it that is different from later packages, that makes me know this is one of the earliest style labels.

Q. One of the earliest labels?

A. One of the earliest labels, yes.

983 Mr. Offield: Q. What makes you think that is one of the first labels or the first type of label produced for William Wrigley Jr. & Company?

A. Well, it has a border around it here (indicating) and the ruling on the back panel and it says "Manufactured by" on there. That was one of the first ways we made them. Then the side panel on here has a round-ended bar and we later made a spear on that instead of the round ends there.

Q. Now, when you first began to make these labels, you stated you made a batch of about fifty thousand, as I recollect?

A. Fifty or a hundred. It was what we call a small order.

Q. Do you recall whether that was in 1893 or 1894? Can you state anything more definite on that?

A. I couldn't be positive on that. I know the job dragged along quite a while on account of their being busy on some other things in connection with the Fair at that time.

Q. Now, did you make any other batches of these label in fifty or hundred thousand lots after the first batch in 1894?

A. O, yes, we made them right along. I don't think up to 1900—I don't recollect of ever having an order of more than a nundred thousand.

Q. Well, how frequently were those orders of a hundred thousand, to the best of your recollection?

984 A. Well, I think it was about two or three times a year at the beginning, or possibly only twice, and then it got a little more frequent up to 1901, 1902, or 1903, somewhere along in there, and then they began to get a little more of it.

Q. Have you any records in your possession showing the

amount of labels manufactured by R. J. Kittredge & Company for William Wrigley Jr. & Company prior to 1900?

A. No, our records are gone back of 1900. All job tickets and envelopes and all that are destroyed. We could not carry them. We have got our books up to 1900, or back to 1900, and our job tickets up to five or six years back from now only. We take and throw them away every year now.

Q. Has anything occurred other than your usual practice of destroying tickets that has caused your records to be destroyed? That is, have you had any fires in your building or anything of that sort?

A. No, sir.

Q. So that the records back of 1900 have been disposed of by your company on account of the accumulation of new matter in your place of business?

A. They took up so much room that we burned them. We burn them every year; cleaned up seven or eight years back.

Q. Now, you are positive; are you, that from the year 1894 up to the year 1900, labels like that shown on Complain-
984½ ant's Exhibit Number 1, or minor modifications of that label were made once or more during each year for William Wrigley Jr. & Company?

A. Yes, I am sure of that.

Q. Attached to the Defendant's answer, identified as Exhibit 2, there is marked a label Number 1. I will ask you to state whether or not R. J. Kittredge & Company made that label.

(Counsel hands exhibit to witness.)

A. I should say they did.

Q. Is that one of the earliest labels or one of the later types?

A. That is one of the earliest labels.

Q. When was that label first manufactured by R. J. Kittredge & Company?

A. I should think it was the same as this one here (indicating).

Q. The year 1894?

A. That or right after that. This is from the same set of plates.

Q. Now when or about when—

A. That was changed (indicating).

Q. Just talk on the record. Don't talk to me. When was Label Number 2 produced by R. J. Kittredge & Company, if produced by them?

Mr. Aldrich: I think the records will show, if the Court plase, that he is referring to a list of labels that is attached to the answer.

Mr. Offield: Oh, yes, I referred to that in my question.

985 A. That was later on when we took the "Manufactured by" off. The words "Manufactured by" were taken off after the second or third batch. I couldn't say when.

Q. That is, label Number 2 was subsequent to label Number 1?

A. Yes.

Q. About when, if you know—Do you know when that label Number 2 was manufactured?

A. No, I couldn't say. We made several lots of those running along between 1894 and 1900.

Q. Can you recall when label Number 3 was manufactured by R. J. Kittredge & Company?

A. That looks like the first lot we made after we made a double face of it and made these side panels having a spear instead of the round ends like this, you know (indicating).

Q. About in what year was label Number 3 made?

A. I should say that was made about 1900 or 1901.

Q. Now, did you print this individual wrapper known as label Number 4?

A. We made some just like it. It looks like one of them.

Q. Have you any recollection of how many of those were made by your company?

A. Very few.

Q. Can you tell in numbers?

The Court: Why all this detail?

Mr. Aldrich: Mr. Wrigley was examined on these different labels, as to when they came out.

986 The Court: The material thing here is the date when you first used spearmint.

Mr. Offield: Yes, your Honor, I want to show these labels—

The Court: Now, just a moment, what you want to prove by this witness and other witnesses is the date when you began to use the word "spearmint" and manufactured chewing gum under that name, and then you also incidentally want to show that you continued the business.

Mr. Offield: Continued the business.

The Court: About which, I understand, there is no dispute.

Mr. Offield: I understand there is considerable dispute, your Honor.

The Court: About the continuance of the business?

Mr. Aldrich: They made Spearmint from 1900, 1901 or 1902 on; not commercially until 1906 is our contention, and we claim they have not had any continuous dress for it.

Mr. Offield: That is my exact purpose in introducing this testimony, your Honor. They claim we had not made it commercially until 1904 or '06.

The Court: Well, go ahead.

Mr. Offield: Q. When was the label of the type Number 5 manufactured by R. J. Kittredge & Company?

A. That came in along about 1904 or '05.

Q. And is that the last type of label that you have manufactured for William Wrigley Jr. & Company?

987 A. No, the later type has a coupon on the back and a coupon here (indicating) in place of this double face.

Q. Now, what is the earliest record that R. J. Kittredge & Company has as to the manufacture of spearmint labels of William Wrigley Jr. & Company?

A. What our books show?

Q. What your books show?

A. Our earliest record is November, 1900, we had an order for a million.

Mr. Aldrich: That is not the best proof.

The Court: Q. Had an order for what?

A. For a million and we delivered a million and forty-five thousand I believe the 27th of December, 1900. That is the oldest book of record we have got of original entries.

Q. Have you got that book of records with you?

A. Not with me. It is at the factory.

Q. Can you produce it tomorrw?

A. Yes, sir, in an hour.

Q. I will ask the witness to produce that book of records at the session tomorrow morning. And have you the records of R. J. Kittredge & Company subsequent to 1900, as to the numbers of labels manufactured for William Wrigley, Jr. & Company?

A. Only our ledgers.

Q. Would those ledgers show the amount of sales?

988 A. The amount of sales but don't tell what it is for; just says job number so-and-so and so many dollars.

Q. Any way of identifying those jobs—

A. No, I looked for that and we haven't got them.

Q. — as printing any other labels for William Wrigley, Jr. & Company besides spearmint?

A. For the Rubber Paint Company at that time.

Q. That is, there is no way of separating the labels you were printing for the Rubber Paint Company at that time and the labels you were printing for the William Wrigley, Jr. & Company?

A. No way except the entry of the job numbers and the job numbers are all gone except this one book.

Q. How do you happen to have this one book in your possession?

A. That is where we stopped at the beginning of 1900. This book, I guess, goes back a little beyond 1900, because we didn't start fresh the first of any year in a new book always; never did.

Q. Now, what records have you for 1900 as to how many spearmint labels you manufactured for either the Rubber Paint Company or William Wrigley Jr. & Company?

A. I think we have complete order blanks for all of them.

Q. For the year 1900?

A. Yes, sir.

Q. And at the hearing tomorrow will you produce those records?

989 A. That is a big job. I couldn't do it that time. That would take half an express wagon load of books and order tickets. Each book is that thick (indicating) for every year. I have got the index cards with me, I believe, from about 1900 —I don't know how far back they go, of all the orders received up to—

Q. Would these index cards identify the spearmint labels?

A. They give the amount ordered, and the dates they were ordered and the size of them and the price.

Mr. Offield: Well, it will save time, your Honor, if we produce those index cards.

A. But those index cards don't go back as far as 1900, I know, because we only began using them about seven years ago.

Q. How far back do they go?

A. About seven years ago; to 1900.

Q. That would be of no service at all. I will ask you to produce at the hearing tomorrow morning the 1910 record which you have, showing the number of spearmint labels manufactured in that year and I would also like to have some one take off from your books there, if possible, the amount of spearmint labels that have been printed by your company for William Wrigley Jr. & Company from 1901 to 1904.

Mr. Aldrich: The first part of what he requires of the wit-

ness, if the Court please, I object to as incompetent
990 and immaterial. I am not challenging what they did after 1904 or 1906, along there. I am challenging what they did before that time. Now that book that he says shows an order in December, 1900,—

The Witness: November.

Mr. Aldrich: November or December, 1900, seems to me to be material. That I would like to see.

The Court: That is one thing he has asked him to bring in.

Mr. Aldrich: That is all right.

The Witness: November, 1900, job number 14,185, ten million forty-two thousand package gum bands Wrigley's Spearmint, 16½ cents; delivered and billed December 27th, 1900, $107.90.

Mr. Aldrich: We want to see the original record of that.

A. That I can get. I would have brought it but I did not know whether you wanted it or not.

The Court: What else with this witness?

Mr. Offield: That is all I have with this witness, your Honor.

Mr. Aldrich: May I defer my cross-examination until tomorrow morning?

The Court: Yes.

Mr. Aldrich: Trank you.

991 Mr. Offield: After I put in my evidence as to this record.

The Court: Call your next witness.

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ALBERT H. SMITH, called as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Offield.*

Q. State your name, age, residence and occupation.

A. Albert H. Smith; Los Angeles, California; age 46; in the manufacture of chemicals.

Q. Were you ever connected with the Rubber Paint Company of this city?

A. Yes, sir.

Q. In what year?

A. From 1893 until the last of 1906, January 1st, 1907.

Q. In what capacity were you employed by the Rubber Paint Company during that period?

A. I had charge of the details of the business under Mr. Cox and Mr. Buck.

Q. Mr. A. G. Cox and Mr. O. J. Buck?

A. Yes.

Q. During the year 1893 did the Rubber Paint Company manufacture chewing gum?

992 A. Yes, sir.

Q. Did they manufacture it for William Wrigley, Jr. & Company in that year?

A. Yes, sir.

Q. What brands of chewing gum were manufactured by the Rubber Paint Company for William Wrigley, Jr. & Company in the year 1893?

A. When I entered their employ in that connection they were manufacturing Vassar and Lotto and Smryna and Youcanchew. As far as I remember those are all the flavors.

Mr. Aldrich: When did he say he entered their employ?

Mr. Offield: 1893.

A. 1893.

Q. During the time you were employed by the Rubber Paint Company did that Company manufacture any spearmint chewing gum for William Wrigley Jr. & Company?

A. Yes, sir.

Q. In what year?

A. In the early part of 1894.

Q. I show you a package of chewing gum offered in evidence in this case and identified as Complainant's Exhibit Number 1, and ask you to state whether or not the Rubber Paint Company manufactured a spearmint chewing gum for William Wrigley Jr. & Company in the year 1894, wrapped in the manner as shown by this exhibit and bearing a label as identified by this exhibits?

(Counsel hands package to witness.)

993 A. Yes, sir, I believe that is the original label.

Q. And throughout the period that you were employed by the Rubber Paint Company did that company manufacture a spearmint chewing gum for William Wrigley Jr. & Company that was wrapped or contained within a label identical, or substantially identical to the label of complainant's Exhibit Number 1?

A. Yes, in large quantities.

Q. Did you have anything to do with the layout of the

original spearmint label that the Rubber Paint Company had made for William Wrigley Jr. & Company, and if so, state the circumstances surrounding the production of that label.

A. It was designed entirely under my direction. Three sketches were made by Mr. Kittredge's employes. The essential characteristic of each were a spear through the word "Spearmint". I presented those to Mr. Wrigley and he told me they were not what he wanted at all and proceeded to outline a change which simply placed the words and the lettering in the spear, in the body of the spear. And I so ordered it from Mr. Kittredge and that is the label produced.

Q. Well, who made the sketch having the word "Spearmint" within the spear?

A. An engraver in the employ of Mr. Kittredge.

Q. Well, did he make it originally or was there any
994 sketch made prior to that time?

A. The original of that was made by Mr. Wrigley.

Q. Were you present when Mr. Wrigley made it?

A. At his desk.

Q. And what did you do with the sketch?

A. Returned it to Mr. Kittredge with instuctions "That is the way we would have to print it," which was in two colors, contrary to our original intention.

Q. How do you remember the details so accurately as to the production of this label prduced as Complainant's Exhibit Number 1, and after so many years have elapsed?

A. Because I was a youngster and it was my first experience along that line, the first two-color label that we ever got out, and all of the details were of great interest to me at the time.

Q. Was it the first work you had ever done on a label while you were with the Rubber Paint Company?

A. No, the first on a two-color label.

Q. Now, did you have anything to do, while with the Rubber Paint Company, with the manufacture of chewing gum itself?

A. Checking up the—I had everything to do with the wrapping and packing, charge of the employes, the direction as to the quantities of gum necessary to be made for the orders that were in sight, and general charge of the Zeno business.

995 Q. And you were in a position to know as to practically how much gum was made each day by the Rubber Paint Company?

A. Absolutely.

Q. Now, confining your answers to Spearmint gum alone, can you state approximately how much gum was made by the Rubber Paint Company of the spearmint flavor for William Wrigley, Jr. & Company, beginning the first part of the year 1894?

A. It was made in quantities of 350 boxes at a time, probably two or three times a week. We made altogether about five of those batches of different flavors.

Q. And how were those batches of different flavors sent from the Rubber Paint Company to William Wrigley, Jr. & Company? In what form of containers?

A. Open heavy containers with cleat handles.

Q. I don't believe you have quite answered my question as to the quantity of gum. My question was directed as to whether or not you have any recollection as to the quantity of Spearmint gum alone that was manufactured by the Rubber Paint Company for William Wrigley Jr. & Company in the year 1894?

A. Oh, at least 10,000 boxes.

Q. Upon what do you base that figure of 10,000 boxes?

A. The first order for labels was 100,000, which was
996 enough for 10,000 boxes, because it was a five-stick label at that time.

Q. And as to the year 1895, have you any recollection as to what the production of Spearmint gum by the Rubber Paint Company for William Wrigley Jr. & Company was in that year?

A. It increased largely until 1896.

Q. And what happened in the year 1896?

A. The large demand for a campaign gum with a button, McKinley Button, prevented the pushing of the other brands to the extent they had been before.

Q. And for how long a period was that campaign gum pushed to the exclusion of other brands?

A. Only during the year 1896.

Q. And in the year 1897, was the manufacture and sale of Spearmint gum to William Wrigley Jr. & Company increased over the year of 1896?

A. I don't think very largely in 1897, no.

Q. How about in the year 1898?

A. Quite largely in 1898 and 1899.

Q. And as to the year 1900, have you any recollection of that year?

A. Why, the increase was considerable and gradual from 1898.

Q. And after that year there was a gradual increase up to what period, according to your recollection?

997 A. The increase in 1899 was in connection with a premium, which was a small hand dater which we packed with the gum, and it was very considerable, and then other brands were selected for advertisement and to push and there would be alternate years when there wasn't a great deal of gum sold.

The Court: We will suspend here.

Mr. Offield: All right, your Honor.

The Court: Ten o'clock tomorrow morning.

Whereupon an adjournment was taken to Tuesday, March 13th, 1917, at 10:00 o'clock A. M.

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998 March 13, 1917.

10:00 o'clock A. M.

Court convened pursuant to adjournment.

Present: As before.

ALBERT H. SMITH resumed the stand and his direct examination was continued by Mr. Offield:

The Court: Have you any further questions?

Mr. Offield: Yes, I have two or three other questions.

Q. You have testified as to the making of batches of spearmint gum for a considerable time prior to the time that you left the Zeno Manufacturing Company. I would like to have you state if these batches of gum that were made of the spearmint flavor were in the nature of experimental batches. Please state fully how those experiments were conducted and for what purposes the batches were made.

The Court: Very briefly. I do not think it is very material.

A. They were commercial manufacture, but the experiment was the taking out before the batch was finished of a small amount and trying a separate or different arrangement of
999 the flavor; but the experiments were not on the gum as experiments entirely. They were commercial manufac-

ture of the gum in large quantities, and the experiment in a small way on the side.

Mr. Offield: Q. Was the main batch of the gum used for commercial purposes?

A. Yes.

Q. That is, was it afterwards marketed?

A. Yes.

Q. There have been called to your attention various packages of cheking gum manufactured by the Zeno Company and the Rubber Paint Company for William Wrigley, Jr. & Company, having different shapes; such as the oblong sticks, as Juicy Fruit, the square packages, such as Sweet Sixteen, and the cartons and candy coated gum, such as Nips; and I will ask you to state whether or not in your opinion there was any reason for any chewing gum manufacturer putting upon the market chewing gum in these different shaped packages, and if so, what those reasons were.

The Court: What is the materiality of that? What does that tend to prove?

Mr. Offield: It tends to prove this, your Honor: They have contended that all of the chewing gum packages that Mr. Wrigley placed upon the market were copies of other manufacturers' products and upon the market.

1000 The Court: Well, suppose they were. You are asking him the reason for a certain thing. What difference does that make?

Mr. Offield: I want to show by this witness that it was customary to market chewing gum in different shaped packages.

The Court: Haven't you already done that?

Mr. Offield: I—

The Court: You are losing time about a lot of matters here that do not have anything to do in this case, in my opinion.

A. They were not counterfeit packages.

Mr. Aldrich: I move to strike it out.

The Court: Motion sustained.

Mr. Offield: Q. Please state what reasons there were for marketing packages of different shapes at the time of your employment with the Zeno Company.

The Court: Very briefly.

A. When chewing gum was first introduced into certain sections as a confection it was introduced in some sections as a heavy, thick bar, a two stick package wrapped in foil, in other sections as a square package, and they did not know

chewing gum in those sections in any other shape; and in every case the Juicy Fruit was preceded by several different kinds of gum of the same shape, and was not an imitation.

Mr. Aldrich: I move to strike that out, not an imitation.

1001 The Court: Well, I will overrule it.

To which ruling of the Court the defendants, by their counsel, then and there duly excepted.

The Court: It is utterly immaterial. Come to something that is material.

Mr. Offield: Q. Was that also true as to the Sweet Sixteen and the Nips or Pepsin gums of the Wrigley Company?

A. Yes.

Mr. Offield. That is all, your Honor.

*Cross-Examination by Mr. Aldrich.*

Q. Mr. Smith, between what years were you at the Zeno Company?

A. About thirteen years; from 1893 to 1906, the last, or the first of 1907.

Q. The advertising campaign had just begun then as you were leaving?

A. Yes; just begun.

Q. Who was your gum maker during the first years that you were there?

A. Paul Nelson.

Q. And he continued to be your gum maker until what time?

A. All the time I was there.

Q. I thoughht Nelson discontinued early in 1906, didn't he, as gum maker, and became a foreman or superintendent of the manufacturing department?

1002 A. He began to assume additional duties. He did not discontinue entirely as gum maker.

Q. Well, there was a man who had been his assistant gum maker from early up to 1906, who then became the gum maker in 1906, was there not?

A. I didn't know anything about that; no.

Q. What part of the business were you in?

A. All the details except the financial.

Q. Of the manufacturing department?

A. Yes, manufacturing and selling.

Q. Did you know a man by the name of Bernard Gontowsky, who was gum maker in the year 1913?

A. Just knew him as Bernard Jordan.

Q. He was gum maker there, was he not?

A. No, not gum maker.

Q. Mr. Smith, you had some correspondence with me, did you not?

A. Yes, sir.

Q. Have you the original of my letter to you of February 7, 1917, with you?

A. No, sir.

Q. Will you look at this copy and see if it is a carbon copy of the letter I addressed to you?

A. I think so, undoubtedly.

Mr. Aldrich: I ask to have the letter identified by the witness marked for identification Defendants' Exhibit 8.

1003 (Said letter was marked "Defts Ex 8 Ident 3/13/17 F. W.")

Q. I hand you a letter under date of February 15, 1917, addressed to myself, and purporting to be signed by Robert H. Smith, and ask you if it is the letter you wrote in answer to my letter.

A. Yes, sir.

Mr. Aldrich: I ask that the letter identified by the witness be marked for identification Defendants' Exhibit 9.

(Said letter was marked "Defts Ex 9 Ident 3/13/17 F. W.")

Q. I hand you what purports to be a carbon of a letter in answer to the last, dated February 20, 1917, addressed to you at 201 North Robinson Street, Los Angeles, and ask you if that is a carbon copy of my answer.

A. I believe so.

Mr. Aldrich: I ask to have it marked for identification Defendants' Exhibit 10.

(Said letter was marked "Defts Ex 10 Ident 3/13/17 F. W.")

Q. I will ask you, Mr. Smith, whether you saw Mr. Wrigley after the receipt of these letters.

A. Yes, sir.

Q. I will ask you whether or not the matter of controversy referred to in your letter was settled.

A. No, sir.

1004 Q. State whether or not, to your knowledge, Mr. Wrigley sent a telegram here with reference thereto.

A. Not that I know of.
Mr. Aldrich: That is all, if the Court please.
Mr. Offield: That is all, your Honor.

R. J. KITTREDGE, recalled as a witness on behalf of the complainant, testified as follows:

*Direct Examination by Mr. Offield.*

Q. At the close of your testimony yesterday you had referred to the manufacture of some million Spearmint labels in the year 1900 by R. J. Kittredge & Company, and were asked to bring whatever records you had in your possession to substantiate that statement. Have you brought such records with you?

A. I have the book, yes, sir.

Q. Will you please explain what that book is, whether or not it is an original entry, and what the records of the book show?

A. This book is a record of all the orders we received during the period this book covers. It was the only book
1005 we had at that time, or the only way we had at that time of keeping entry of our orders.

Mr. Aldrich: He has not yet answered the question whether it is a book of original entry.

A. It is a book of original entry, and the only one we kept at that time, the only kind we kept for the original entry.

Mr. Offield: Q. Please read upon the record what those entries are.

Mr. Aldrich: Before doing so, please allow me to look at it, won't you?

A. Yes.

Mr. Aldrich: (After looking at the book) Go ahead.

A. November 1, 1900, Job No. 14185, Zeno Manufacturing Company, 142,000 package gum bands, 16½ cents, Wrigley Spearmint, $171.93, billed December 27, 1900. Check for ledger. That is all of that entry.

The Court: Is that all?

Mr. Offield: Just a moment, if your Honor please.

The Court: Counsel could have looked at this book before court and not take up so much time, the Court's time, looking over these things. They ought to be looked over outside of court.

Mr. Offield: Q. That is the first entry in this book, original entry, showing the manufacture and sale of Spearmint 1006 labels by your company, is it?

A. I believe it is. I have not looked back of that myself.

Q. And that is the only record which you have in your possession showing the first actual manufacture and sale of labels of the Spearmint type?

A. Yes, so far as I know, it is the oldest record I have.

Q. Will you please state whether or not you have heretofore made for William Wrigley, Jr. & Company labels of green for use upon chewing gum?

A. I have.

Q. For approximately how long have you made green individual wrappers for the Wrigley Company?

A. Oh, as far back as I can remember. It was one of the standard colors that we could get in stock and we would print up on new propositions proofs in several of the colors and let the customer select the one he wanted.

Q. I show you the green label Hilo Pepsin Gum, attached to which is an invoice—

A. That is the original entry.

Q. Original entry document, and will ask you when that green label was produced by your company, and for whom.

A. August 3, 1903—1905, it must have been. Yes, 1905. Hilo Gum Company, 250,000 vending machine bands, cinnamon; ditto, wintergreen; ditto, one cent long wrappers, cinnamon; ditto, long wrappers wintergreen; 100,000 five cent bands Hilo. Then there is the deliveries here and the price.

1007 Q. For whom was that wrapper made?

A. Hilo Gum Company. They were completed September 27, 1905, that is, the final billing of them was done.

Q. For the Hilo Gum Company. Was it made for the Zeno Company?

A. No, sir.

Q. An original order from the Hilo Gum Company?

A. Yes.

Q. Who was the Hilo Gum Company, do you know,—Chicago?

A. That is all I know of them. I used to know one or two of their men that used to come over there. I could not call their names just now.

Q. I show you another green label of the Kel-I-Cin Gum

Company of Chicago, and ask you to state when that green label was made by you.

A. It was ordered by letter October 19, 1914. We entered it on the 20th of the same month and promised for delivery on the first of December.

Mr. Aldrich: What is the materiality? I object to the materiality of that.

Mr. Offield: The sole materiality, your Honor, is the fact that we use a green label on our peppermint gum. There have been some charges here that Larson & Company was the first to use a green label.

Mr. Aldrich: That was subsequent to the Larson use.

1008 The Court: This is way down in 1914.

Mr. Aldrich: Therefore what is the use?

Mr. Offield: I have other labels here. I thought that antedated that.

A. No. That is December 12, 1914.

Q. I show you a Juicy Fruit label of William Wrigley, Jr. Company, and ask you when that label was printed by R. J. Kittredge Company.

A. This lot that this came from was made in April, 1908.

Q. I show you a Hillman's Pepsin Gum Label and ask you if that was made by your company, and if so, when.

A. That was made by us for the Zeno or the Wrigley Company in 1908.

Mr. Offield: I ask that the original book entries identified by the witness be offered in evidence and marked Complainant's Exhibit No. 13; that the Hilo label, together with the original entry slip, be offered in evidence and marked Compplainant's Exhibit 14; that the Juicy Fruit label be offered in evidence and marked Complainant's Exhibit 15, and that the Hillman's label be offered in evidence and marked Complainant's Exhibit 16.

The Court: Is that all the direct?

Mr. Offield: That is all the direct with this witness, your Honor.

Complainant's Exhibits No. 15, No. 16, Attached to This Page But Not Copied.

1008a The Court: Cross-examine.

*Cross-Examination by Mr. Aldrich.*

Q. Mr. Kittredge, at the time that you printed the wintergreen label with a green label for L. P. Larson, Jr. he consulted you about the label, did he not?

A. Yes, I helped him get it up.

Q. And you advised him to take a green label as something new and distinctive, different from any other label on the market that you knew of, did you not?

A. I don't think I did.

Q. You have no recollection of that, then?

A. I have a recollection of what I did do.

Q. What did you do?

A. I drew his proof when we got the plate ready on various samples of paper, probably seven, eight or nine different colors, and he selected the green.

Q. You advised him to take the green?

A. No, I did not.

Q. You recall Mr. Larson's coming there and asking to look at your labels, do you not?

A. Several times, yes.

Q. You have a file in which you keep the labels which you have made for different customers?

1009 A. Not a file; a lot of boxes, yes, paste board boxes that they put samples in when they don't forget it.

Q. And showing the labels that you have manufactured for the different customers?

A. Yes; not complete, though.

Q. And from that Mr. Larson took the samples that are attached to the answer here as Exhibit 2, to which your attention has been called?

A. Well, I do not know whether he got those there or not.

Q. They are samples—

A. Of labels we made, undoubtedly.

Q. I call your attention to No. 2, which you said was in 1904, and call your attention to the fact that it is marked on the back May 16, 1907. You marked them on the back as when they were ordered and used, did you not?

A. No, sir.

Q. You did not?

A. No, sir.

Q. I noticed that they were on these here which you had marked here.

A. I took those samples out of the job tickets. They were marked on that day.

Q. Do you have a job ticket for this entry on the book here?

A. No, sir; our job tickets are all destroyed, practically all as far as I know, back of eight years ago, seven to eight years ago.

Q. Well, we seem to have one here of 1905, do we
1010 not; is that right?

A. There may be that. I do not know which one that did come out of. I did not get all these samples out myself.

Q. And what do you know about the dates, then?

A. Which?

Q. You relied upon somebody else to get out the samples?

A. No, that is my writing on some of those, I know.

Q. And you have not any job ticket, except this one, for any of these?

A. I am quite sure they come out of a job ticket. I would have to look it up. That was gotten out here when you subpoenaed me some month or two ago. These papers were got out then and were kept wrapped up until yesterday.

Q. I asked you to bring with you by subpoena duces tecum a sample of all labels that you had made for William Wrigley, Jr. & Company. Have you done so?

A. I could not do so.

Q. You have not?

A. No, sir. I brought as far back as I have the index cards showing the orders that we have made for them.

Q. I just asked for the samples of the labels. You have not got those?

A. I have not got them all. I could not begin to get them all.

Q. I see that in your testimony in the Norris case
1011 you said that you changed the samples—in the Grove case—that you changed the samples of Mr. Wrigley's packages and, "Some years ago we removed the word Philadelphia not only on the Spearmint but on all Wrigley wrappers and labels." Have you any of the labels in which the word Philadelphia was on in there?

A. I do not think we have. There might be some, but I would not want to say, because—well, I don't want to take up your time.

The Court: No, don't give your reasons.

Mr. Aldrich: Q. You have no such labels?

A. As I said in my answer, I do not believe we have.

Q. And have you made search for them?

A. Yes, sir.

Q. And did not find them?

A. No, sir. I found nothing but what were more recent than I was looking for.

Q. Mr. Kittredge, at what time was it that Mr. Wrigley loaned you $10,000 that you told Mr. Larson about?

Mr. Offield: I object to the question, your Honor. It is absolutely immaterial.

A. He never loaned me $10,000.

Mr. Aldrich: Q. You did not tell Mr. Larson that he had?

A. No, sir.

Mr. Aldrich: That is all, Mr. Kittredge.

Mr. Offield: That is all, your Honor.

1012 The Witness: I would like to explain that $10,000.

The Court: No, no. I have no time for that.

JACOB FOTRE, a witness called on behalf of complainant, being first duly sworn, testified as follows:

*Direct Examination by Mr. Offield.*

Q. Please state your name, age, residence and occupation.

A. Jacob Fotre; forty-two; 6723 East End Avenue.

Q. Occupation?

A. Department manager.

Mr. Aldrich: I cannot hear you from here.

Mr. Offield: Just speak up a little louder so that we can all hear you.

A. What do you want to know?

Q. Your occupation.

A. Occupation, department manager.

Q. Department manager of what?

A. Premium department.

Q. What company?

A. William Wrigley, Jr. Company.

Q. How long have you been employed by William Wrigley, Jr. & Company—William Wrigley, Jr. Company?

A. Nineteen years and two months.

Q. During all that time have you been in the premium department?

A. Yes, sir.

1013 Q. Have you had anything to do with the compiling of the Wrigley red books from time to time?

A. I did.

Q. I show you a Wrigley red book entitled Salesmen's Edition Wrigley Red Book Catalog, and ask you to state

when, if you know, that book was first compiled and published.

A. This was compiled in the year 1899 and was mailed out in July, 1899.

Q. You have ascertained those dates from what record?

A. From the records in, as we call it, the scrap book.

The Court: Is that all?

Mr. Offield: No, your Honor. I seem to be missing a book here.

The Court: Go on a little faster.

Mr. Offield: I am trying to as fast as I can, but I have mislaid a book. Here it is.

Q. I show you a Wrigley red book, entitled Fifth Edition and will ask you to state—

Mr. Aldrich: Mr. Offield, if you will allow me a suggestion, I would like the one you have referred to identified.

Mr. Offield: I was going to identify them all.

Mr. Aldrich: I do not want to mix up. I cannot tell which he says.

Mr. Offield: All right.

Q. I hand you a Wrigley red book entitled Fifth Edi-
1014 tion, and will ask you to state when that book was compiled.

A. That was compiled previous to June, 1901, and mailed to our trade in June, the month of June, 1901.

Q. You personally know those facts from your connection with the compilation of the book?

A. Yes, sir.

Q. And the mailing of the same?

A. Yes, sir.

Mr. Offield: The two books referred to are offered in evidence. The one entitled Salesmen's Edition of 1899 is offered as Complainant's Exhibit 17, and the Fifth Edition, Complainant's Exhibit 18.

Q. I show you a paper covered pamphlet entitled Supplemental Edition of Wrigley's Red Book, and will ask you to state when that red book was compiled and distributed to your trade.

A. This supplement?

Q. Supplement.

A. That was compiled in 1904. I believe that was a supplement to our Fifth Edition.

Mr. Offield: I ask that the book be offered in evidence and marked Complainant's Exhibit 19.

Q. I show you a Wrigley red book entitled Sixth Edition, and will ask you to state when this book was compiled and distributed to the trade of the William Wrigley, Jr. Company.

A. That was compiled previous to September, 1905, and mailed to our trade in September, 1905.

1015 Mr. Offield: The book is offered in evidence and marked Complainant's Exhibit 20.

That is all.

*Cross-Examination by Mr. Aldrich.*

Q. This book that you have marked 18, is that three color work or lithography?

A. That is lithography.

Q. This one that you have marked 17, is that three color work or lithography?

A. That is lithography also.

Q. And the other two?

A. They are all lithography.

Q. All lithography?

A. Yes.

Q. And how do you ascertain the dates when you say they were issued?

A. From the records in my scrap book.

Q. Have you the scrap book?

A. Why, we have. I do not know whether it is here or not. Is it, Mr. Offield?

Mr. Offield: It is not in court, no. I have got the scrap book.

Mr. Aldrich: Q. When were those records made?

A. They were made on the day they were mailed out.

Q. When did you go from three color work to lithography?

A. Why, I think we only had one edition in three color work, if I remember right. The rest were lithography.

Q. And did you have charge of these premium books

1016 at that time?

A. Yes, sir.

Q. And if Mr. Wrigley has testified in the Grove case that you did not go to lithography until 1903, he was in error, was he?

A. I do not know whether he was or not.

Q. You do not know whether he was or not?

A. No.

Mr. Aldrich: That is all.

The Court: Call your next witness.

Mr. Offield: That is all. That closes our prima facie case, your Honor.

The Court: Proceed.

Mr. Aldrich: If the Court please; On this subject, if I may be indulged just a moment, in a prior case Mr. Offield has introduced what he called his prima facie case, and then in rebuttal has put in what is properly original evidence.

The Court: He won't be allowed to do that.

Mr. Aldrich: All right.

Mr. Offield: There is, of course, certain evidence, your Honor, that has been taken by this defendant under the statute, and I should have an opportunity to reply to those depositions.

The Court: You will have an opportunity to introduce what is strictly rebuttal testimony, and no other. The same rules apply in this case as in any other case.

1017 Mr. Aldrich: I want the depositions. I thought these were opened. These are not nearly all the depositions, Mr. Clerk, I wish you would get them all in shape, if you will, Mr. Clerk. Mr. Reed will help you.

To save time, if the Court please, I will commence reading Mr. Pulver's deposition, and I suppose that I may skip all of the formal parts.

The Court: Oh, yes. Come to the testimony.

And thereupon the defendants, to maintain the issues on their part, introduced the following evidence, to-wit:

Mr. Aldrich then read the deposition of Frank F. Pulver, which is in words and figures as follows, to-wit:

1018 • • • No. 488 • • •

NOTICE

To James R. Offield, Esq., Solicitor for Complainant and Defendant to the Counterclaim, 53 West Jackson Boulevard, Chicago:

You will please take notice that the defendant herein will take the testimony of Frank F. Pulver, who resides in the City of Rochester and State of New York and who is temporarily residing in the City of St. Petersburg, County of

Pinellas and State of Florida, both of which places are more than one hundred miles from any place at which the District Court of the United States, for the Northern District of Illinois, Eastern Division, is appointed to be held by law; which deposition is for and on behalf of defendant and coun-
1019 terclaimant and will be taken before Annie McRae, at 476 Central Avenue, in the city of St. Petersburg, Pinellas County, state of Florida; said Annie McRae is a Notary Public in and for the County of Pinellas and State of Florida and is not of counsel nor interested in any way in this cause. The taking of said deposition will commence on the 21st day of March, 1916, at ten o'clock A. M., and thereafter from day to day as the taking of the depositions may be adjourned until the same shall be completed. Such testimony will be taken in accordance with the provisions of Sections 863, 864 and 865 of the Revised Statutes of the United States and the Equity Rules of said Court. Of this you will take due notice.

CHARLES H. ALDRICH
FRANK F. REED
*Sol'rs for Defendant and Counterclaimant.*

Received a copy of the above and foregoing notice this 11th day of March, 1916.

JAMES R. OFFIELD
*Sol'r for Complainant and Counter-Defendant.*

1020 * * * No. 488 * * *

Depositions taken before me, a Notary Public in and for Pinellas County, State of Florida, pursuant to the notice hereto attached and made a part hereof.

Present in behalf of the defendant, Charles H. Aldrich, Esq.

Mr. Aldrich stated that he would proceed with the direct examination of the witness, Mr. Frank F. Pulver, notwithstanding the absence of James R. Offield, Esq., the Solicitor for the complainant, as Mr. Offield had requested him so to do, but would not close the examination until Mr. Offield's
1021 arrival, which, he was advised, would be on March 22nd, 1916.

MR. FRANK F. PULVER, being by me first duly sworn, on behalf of defendant and counterclaimant testified as follows:

*Interrogated by Mr. Charles H. Aldrich.*

Q. You may state your name and residence.

A. Frank F. Pulver, Rochester, Monroe County, New York.

Q. Are you the Frank F. Pulver who was one of the defendants in a suit brought in the United States District Court, Southern District of New York, in which Wm. Wrigley Jr. Company, a corporation of West Virginia, was the complainant and the Digesto Company, a corporation organized under the laws of the State of New York, Frank F. Pulver and Charles E. Blauvelt were defendants?

A. I am.

Q. There was a suit brought by the same complainant against you and substantially the same defendants at or about the same time in the United States District Court for the Western District of New York, was there not?

A. I think so.

Q. You may state when you first began the manufacture of gum, and state in as brief and concise a way as possible the history of your connection with such manufacture.

A. I started in 1889, in Elgin, Illinois, being em-
1022 ployed by the Elgin National Watch Company, making gum there at odd times, until about the middle of 1890. It is so long ago, and as I have no data before me, I would not state positively as to the above dates or those that follow, but will give the same to the best of my recollection. I then moved to Rochester, New York; from there to Albany, New York, in 1891; and from Albany to Troy, New York, in 1892; and from Troy, New York, to Rochester, New York, in 1894, in which place I continued the manufacture of gum up to the 20th of December, 1913.

Q. What kind of gum, and how was it wrapped, did you manufacture at Elgin, Illinois?

A. I manufactured spearmint gum, and it was wrapped in pink labels, each stick wrapped separately, similar to the Yucatan on the market at that time. The five sticks were compiled and held together by a narrow rubber band, while the Yucatan package was held with a narrow paper band, and of an entirely different flavor than my spearmint package.

Q. What inscription, if any, was on the individual wrappers at this time?

A. The word "Spearmint" appeared in large, prominent letters underneath which was the words "Chewing Gum," in small type. By unwrapping the package the address appeared on the lower part of the wrapper: "Manufactured by F. F. Pulver, Elgin, Illinois."

1023 Q. Where did you sell this gum?

A. In Chicago, Illinois.

Q. When you went East, where did you first manufacture chewing gum?

A. In Rochester, New York.

Q. While you were manufacturing at Elgin, did you place the different packages in a box, and, if so, what kind of a box?

A. I used a manilla board box, which was the first box of the kind on the market, and is used to-day by a number of gum manufacturers. This box contained twenty packages, each package containing five sticks, individually wrapped in pink papers and banded together with a narrow rubber band.

Q. How long did you keep the package you have described on the market, and when did you change it, if at all?

A. In 1891 I discovered the similarity between by package and the Yucatan package, and in order to give my packake a distinguishing mark, I placed a counter band printed in red and green on white paper, which covered the package with the exception of about one-quarter inch on either end, and used that counter band until 1913, with the exception that I changed from "Pulver" to "Digesto," the color scheme remaining the same all these years.

Q. I hand you what purports to be a copy of the label used by you at Troy, New York, and ask you if it is a copy, so far as the wording, color scheme and so forth is concerned (handing witness label)?

A. Yes, sir, it is.

1024 Q. How long did you continue to use at Troy, New York, this label?

A. I had the counterband printed in 1891, identically the same as the sample or copy handed me; as I was going to Troy to manage a store for J. R. White; the store was opened up in February or March '92, and I continued the manufacture of gum there until the spring of '94, using counterband identical with the copy.

(Let the counterband which has been identified by the witness be marked "Larson Exhibit One, March 21st, 1916," and attached to deposition at this place.)

Q. How long were you at Albany, New York?

A. I was at Albany to the best of my recollection three or four months.

Q. And while at Albany state if you were engaged in the manufacture of gum.

A. I was continually in the manufacture of gum at Albany and at all times from 1889 to 1913.

Q. And when, if at all, was the counter band changed by the use of the word "Digesto" instead of your name?

A. I moved to Rochester in 1894, and manufactured gum until 1898, at which time I took my brother in as a part-
1025 ner in the manufacture of a vending machine; but he had no part or interest in my five-cent package. In about 1900 we incorporated into a company and called it the "Pulver Chemical Company." Shortly after that I sold my stock, and so that our business would not conflict, I changed the name from "Pulver" to "Digesto," and continued the manufacture of the five-cent package under that name.

Q. I hand you a package of gum (handing witness package) and ask you if that is the package to which you have just referred?

A. The package is the same, excepting that it differs from the original package by having the words, "Its lasting flavor wins favor," and trade mark registered added thereto. I cannot give the exact date on which this was done, but about 1905.

Q. Who made your first cuts for the manufacture of gum in the State of New York?

A. Peter Nagel.

Q. How did you print your labels in the first instance?

A. I purchased a foot press.

Q. From whom?

A. Peter Nagel. I did the printing myself after the first copies were made by Mr. Nagel.

Q. State whether you manufactured any other flavor than spearmint.

A. I made three flavors; spearmint, peppermint and wintergreen, all marked the same as to color scheme, style of address, etc.

1026 Q. I will make the spearmint package which has been identified "Larson Exhibit No. 2, March 21st, 1916," and made part of this deposition.

You may state whether during all the period of manufacture as you have described, your spearmint package main-

tained the same color scheme of red, white and green on the counter band, the individual sticks being wrapped in pink paper, and the counter band being narrower than the length of the stick, so that the ends of the individual sticks so wrapped projected beyond the counterband.

A. It has always been the same as to color scheme, etc.

Q. I infer, Mr. Pulver, that your beginnings were in a small way. About how much gum did you sell, in your opinion, while you were at Elgin, Illinois.

A. I could not state with any accuracy, but posibly a thousand boxes.

Q. When did you become what might be called a large producer and distributor of gum?

A. Why, in the inception I had no machinery and there was no machinery made in those days for the manufacture of chewing gum; but in the latter part of the '90's we were the largest manufacturers of vending machines, or one of the largest, I think, in the country; and we had machinery that was manufactured by Clough & Witt, of Cleveland, Ohio, and J. H. Day, of Cincinnati. I did the largest business of
1027 my career in about 1912 and 1913.

Q. State whether or not to your knowledge there was any other spearmint package of gum upon the market that had any extensive distribution throughout the country prior to your spearmint package.

A. There was no spearmint in 1889, or prior thereto, or any other gum that had an extensive sale at that time.

Q. Where did you sell your spearmint gum prior to 1904-5-6—along that date?

A. It would be a hard matter to state where I sold it, as it was sold to agents, and the spearmint gum was mixed with my other flavors of peppermint and wintergreen, as the spearmint was not a great seller in 1905 or prior thereto. It was offered for sale in practically all the large cities in the United States, together with the other trade.

Q. Please describe your method of putting up packages and your selling scheme.

A. My method was selling gum through agents, who sold it to street vendors, and the stores direct, as it was a hard matter to do business with jobbers, as my gums were not extensively advertised.

Q. State whether or not you gave premiums in connection with your scheme of distribution.

A. At one time we gave a silver pitcher, water
1028 pitcher that could be used on soda fountains, and five boxes of gum for $3.75. This commenced about 1895 or 1896 and continued for several years thereafter.

Q. State whether or not you were on the road during any part of this period, and, if so, where you went?

A. In about 1895 or 1896 I sold silver silverware for the Oswego Silver Metal Company to department stores and premium houses, on a commission basis, and chewing gum to the retail trade. My territory was North of the Mason & Dixon line and East of the Mississippi River. I travelled to all the large premium houses as far North as Duluth.

Q. And the gum which you handled as a side line was manufactured by whom?

A. Manufactured by my brother, H. H. Pulver, who was in my employ, and made the gum for me at #19 Amherst Street, Rochester, New York.

Q. When did you give your entire attention to the gum business and discontinue other lines of activity?

A. To the best of my recollection, it was around '96 or '97.

Q. And if I understand you, Mr. Pulver, you were continuously engaged in the manufacture of gum from 1889 until December, 1913, when you disposed of your business?

A. I was.

1029 Q. From the outset, as I understand you, up to the time you sold out, you were, to the extent of your ability and resources, seeking in good faith to extend your trade?

A. I was.

Q. State whether or not your interest in the gum business has kept you informed as to the product of other companies or individuals manufacturing and selling gum, and the color schemes used by such other manufacturers and vendors of gum?

A. Up to 1909 I had samples of the different gums that came on the market and under my notice, and practically all that were manufactured from 1899 to 1909 by other firms.

Q. In the present case it is asserted by the complainant, Wm. Wrigley Jr. Company, that such complainant is the originator of the color scheme in which the Wrigley Spearmint product is put upon the market, consisting of five individual sticks, wrapped in pink wrappers, these individual sticks held together by a counterband of white paper, and the printing thereon consisting of red, white and green. It

is claimed that this package was originated by the Wrigley Company on or about the year 1894, and was by it then adopted and used as a distinguishing name and dress to identify their spearmint product. You may state whether or not
1030 the complainant, Wm. Wrigley Jr. Company, or its predecessors in interest, did originate and adopt said trade dress and color scheme, or whether such trade dress and color scheme was adopted from some prior user thereof.

A. I don't believe that he originated the package, although he advertised it extensively, and would not have done so if he did not think he was the originator.

Q. Who had used this trade dress prior to this time?

A. I used it at least three years before 1894, at which time Mr. Wrigley was a small producer of chewing gum, as well as myself.

Q. I produce a package of Wrigley's Spearmint Chewing Gum with a white, red and green counter band. The individual sticks are, however, wrapped in tinfoil. Can you tell me when, if at all, Mr. Wrigley sold the spearmint package such as I have shown you?

A. The first I saw of this package, was to the best of my recollection, around 1906.

Q. For how long was it in use at or about that time?

A. I could not say how long it was in use—I can only say when I first saw the package. He claims to have used same since 1894.

Q. How long after you first observed it did you continue to observe that package on the market?

A. Something like a year.

1031 Q. Let the package which has been identified by the witness be marked "Larson Exhibit No. 3, March 21st, 1916", and made a part of this deposition.

Q. I hand you another package of the Wrigley spearmint product (handing witness package), and ask you when you first saw this package on the market.

A. This package is very similar to the package he put out in 1907 or thereabouts, which consisted of five sticks individually wrapped in pink paper and banded together with a counter band printed in red and green, with the words "Wrigley's Spearmint Pepsin Gum" on both sides in very prominent letters. That package was changed to the present package in about 1914, which is known as Wrigley's "Sealed

Proof'' package, on the face of which is "Wrigley's Spearmint, the Perfect Gum," and on the back a United coupon. I believe this was placed on the market the latter part of 1914, at least that was the first I saw of the same.

Q. Are the individual sitcks in the package you now have wrapped separately or not?

A. They are.

Q. And then a pink wrap around the entire package?

A. Yes, sir.

Q. Let the package referred to by the witness be marked "Larson Exhibit No. 4, March 21st, 1916," and made a part of this deposition.

1032 I observe, Mr. Pulver, that in your answer to previous question you have refused to impute to Mr. Wrigley or his predecessors in interest any intention to adopt a package before that time used by others. I infer from this that you are now on friendly terms with the Wrigley interests, and a rather unwilling witness. Is not that the fact?

A. I am a willing witness, but in my former statement I meant to infer, and I thoroughly believe that had Mr. Wrigley known positively that I had a package on the market with the color scheme of red and green on white paper, and a package that could be sold as and for him, that he would not have advertised that color scheme so extensively, as all his advertising helped me. I have known Mr. Wrigley for upwards of twenty years and know that practically all the success he has had in business has been since he advertised extensively the spearmint package and conducted the first great advertising campaign of chewing gum to my knowledge. As I understand, he has spent over a million dollars a year, and he certainly would not do this, knowing that he was advertising another man's color scheme.

Q. He was in fact, however, advertising your color scheme, was he not?

A. I have always claimed the color scheme of red and green, with individual sticks, used in a package of chewing gum.

1033 Q. That means, does it not, Mr. Pulver, that you have always claimed that your color scheme, method of wrapping the individual sticks in pink paper, red, white and green counter band, etc., was identical in all substantial respects advertised and claimed by the Wrigley Company? Is not that so?

A. I believe it is so, and also very fortunate for me.

Q. I hand you a sheet (handing witness paper) of paper, entitled "A little history," and purporting to be issued by the Digesto Company, of Rochester, New York, F. F. Pulver, Treasurer," and ask you whether you have ever seen it before and know who is responsible for its authorship.

A. I am responsible for the authorship of this paper, and the first package known as "California Fruit Chewing Gum" is similar and subsequent to Adams' Tutti Frutti Chewing Gum, and was used to show that up to the time Mr. Wrigley commenced his suit against myself and others there was no such thing as a color scheme known in the chewing gum business.

Q. It was your intention in the preparation of the document which you hold in your hand to truthfully state the dates of the several uses of the names and color schemes set out on the paper, and by whom used, was it not?

A. It was my intention to show that to the best of my knowledge and belief the Wm. Wrigley Company and its predecessors had placed on the market packages of gum
1034 that were similar and subsequent to other manufactures, and that that had been practiced by other manufacturers besides Wm. Wrigley, without any attempt to the originators of these packages to stop the use of same.

Q. You have no reason now, have you, to doubt the truth and accuracy of the facts set forth in the paper which you hold in your hand?

A. I believe every fact set forth is correct.

Q. And this belief is founded, as I understand you from your prior testimony, upon careful investigation, and your long knowledge of, and connection with the gum business?

A. It is.

Q. Let the paper referred to by the witness be marked "Larson Exhibit No. 5, March 21st, 1916," and made a part of the deposition of the witness.

Who was the first, if you know, to wrap the five individual sticks constituting the package of gum in pink paper?

A. W. J. White, manufacturer of Yucatan, Cleveland, Ohio.

Q. And in the White package was each individual stick wrapped separately in pink paper?

A. It was.

Q. I hand you a circular entitled "A Few Facts," and purporting to be issued by the Digesto Company F. F. Pulver,

Treasurer (handing witness paper), and ask you whether
1035 or not this circular and the accompanying typewritten matter, consisting of two sheets attached thereto, were put out by you?

A. The sheet entitled "A Few Facts," on which is reduced Wm. Wrigley Jr. Company's trade-mark, which consisted of a spear, was sent out by me to advertise the fact that his spear trade-mark did not cover the word spearmint, and also that it was issued about one year after the Digesto trade mark, and that the word spearmint is descriptive and could not be copyrighted.

Q. I have detached the printed first page of the matter handed you, the other not being identified by you, and put the same in evidence, asking that it be marked "Larson Exhibit No. 6, March 21st, 1916", and made a part of this deposition.

Further referring to Exhibit 6, I would ask you when first the Wrigley Company put out a spearmint package where the individual sticks were wrapped in pink paper and were held together by a counter band of white paper, the printing thereon being red, white and green?

A. The first package I saw of Wrigley's in which the counter band was printed in red and green on white paper was about 1907 or 1908, but some of the witnesses in the case I had pending at the time, I believe, stated that the package was put on the market in 1906; so I gave the Wrigley
1036 Company the benefit of the doubt by advertising the fact that they claimed to have used it from 1906 on.

Q. What, if anything, do you know about the Wrigley Company or its predecessors in interest publishing what was called its "Red Book," purporting to describe the different brands of gum sold by it?

A. I know that they published a book of premiums and a number of brands of gum that they sold in connection with the premiums. The first book I saw was back in about '98, and they improved on this book from time to time, and finally published a Red Book of two or three hundred pages, to the best of my recollection, about 1911.

Q. In what publication, that is, giving the date, did you first note that they were offering a spearmint brand?

A. I don't recall at present the spearmint brand being advertised in the book, until about 1911.

Q. You have referred to the trade-mark obtained by the

Wr. Wrigley Jr. Company. I hand you herewith a paper (handing witness paper) and ask you if that is the trade-mark to which you refer?

A. The paper handed me is a copy issued by the United States Patent Office of the Wm. Wrigley Jr. Company's trade-mark, which application was filed April 8th, 1907, and known as "Serial Number 26,575," registered August 20th,
1037 1907, and I believe is a true copy of such trade-mark.

Q. The copy identified by the witness, consisting of two sheets, is introduced in evidence, marked "Larson Exhibit No. 7, March 21st, 1916," and made a part of this deposition.

I hand you now what purports to be a copy of the bill of complaint of the Wm. Wrigley Jr. Company, and so forth, against the Continental Vending Company and Frank F. Pulver, filed in the United States District Court, Western District of New York, with its exhibits, and the answer of the Continental Vending Company and Frank F. Pulver, with the exhibits attached to said answer, which answer purports to be verified by you under date of the 28th day of June, 1912, together with the replication filed by the Wm. Wrigley Jr. Company in said cause and what purports to be a copy of the final decree entered in said cause and signed by John R. Hazel, District Judge, together with a paper attached to said final decree purporting to be signed by Wm. Wrigley Jr. Company by Offield, Towles, Graves & Offield, Solicitors for the complainant, Continental Vending Company by Frank F. Pulver, Frank F. Pulver individually, and George F. Hixson, Solicitor and of counsel for the defendants, and to which is attached what purports to be a copy of the affidavit of Frank F. Pulver under date of 19th day of December, 1913, to the effect that you had signed the name of the Continental
1038 Vending Company and affixed its seal by order of the Board of Directors. I show you this paper (handing witness paper) which is certified by S. W. Petrie as Clerk of the District Court of the United States for the Western District of New York as the final record in said cause under date of the 30th day of March, A. D. 1914, and ask you if the labels that are set out as exhibits to the complainant's bill in said cause and those set out as exhibits to defendants' answer therein are the identical labels that were in controversy in said cause?

A. To the best of my knowledge and belief they are.

Q. (Mr. Aldrich states that he does not wish to introduce

this record at this time, but agrees to have it present at the trial of this cause, and thinks he has by his description fully identified the record concerning which witness has been interrogated; but to make this sure, he requests the Notary to mark at the bottom of each page of this record her initials and this date.)

What circulation did you give these circulars which have been introduced in evidence, entitled "A Little History," and "A Few Facts?"

A. Samples were sent out with each box of gum. We also mailed to every jobber and retailer whose name we had in our files a sample of the circular.

1039 Q. At what time did you get out these circulars with reference to the commencement of the suits in the two Districts of New York by Wm. Wrigley Jr. Company?

A. To the best of my recollection it was early in 1913. I could not give the exact date.

Q. You have said in your deposition given in your own suit brought against you by Wm. Wrigley Jr. Company that your Digesto Spearmint package had been distributed by you or sold by you in practically every State and city of the United States. Do you recall that testimony?

A. I do not recall the testimony, but I know that after Wrigley commenced his advertising campaign there was a great demand for my packages, and it was sold all over the United States by street vendors and peddlers, many people buying it thinking it was Wrigley's Spearmint gum.

Q. You stated that you have known Mr. Wrigley for twenty years or more. Did he know you also?

A. I met Wm. Wrigley Jr., at his place of business on Kenzie Street, Chicago, Illinois, back in the early '90's, and sold him a chocolate pitcher set, to be given away as premiums, and at that time he was giving a banquet lamp as a premium with a number of boxes of gum to the jobbing and retail trade. It was about the time of the World's Fair in Chicago, and I do not believe later than 1896. I have

1040 met him on several occasions since that.

Q. State whether he knew that you were engaged in the manufacture and sale of gum.

A. I at that time was giving a silver pitcher with chewing gum, and induced Mr. Wrigley to use the chocolate pitcher as a premium. I do not remember showing Mr. Wrigley my brand of gum at that time.

Q. State whether or not you told him that you were selling gum and using a silver pitcher as a premium.

A. That is so far back that my memory is not clear on that conversation. I am of the opinion that if I had not told him, that it would not have made any difference in my sale of silverware to him.

Q. State whether it is a fact that in the suits brought against you and the Continental Vending Company by Wm. Wrigley Jr. Company in the Southern and Western Districts of New York, testimony was taken on behalf of both the complainant and the defendant.

A. Yes.

Q. What was done with this testimony after you had finished taking it?

A. I believe my attorney has some of the testimony and Mr. Wrigley's attorney has copies of it.

Q. State whether or not it is a fact that each side retained the testimony taken in its behalf, and also carbon copies of the testimony taken by the opposing side in each case?

1041 A. I could not answer that without seeing my attorney, as I think he has a copy of all testimony taken.

Q. I hand you a card entitled "Buy the Original," (handing witness card) and ask you when, if at all, you or the Digesto Company put out that card?

A. I believe that this was put out in about 1912.

Q. I introduce the card in evidence and ask that it be marked "Larson Exhibit No. 8, March 21st, 1916," and made a part of this deposition.

I hand you another card (handing witness card) entitled "The Original," and ask you at or about what time you put that card out?

A. About 1912.

Q. I offer the card referred to in evidence and ask that it be marked "Larson Exhibit No. 9, March 21st, 1916," and be made a part of the record.

Why were not the depositions filed in court, as the statutes of the United States provide?

A. I don't know. I am not an attorney.

Q. State whether or not it is a fact that a settlement was reached in said cause?

A. There was a settlement.

Q. State whether or not the decree which was entered in said cause was entered before or after the terms of said settlement had been agreed upon.

A. I don't know when the decree was entered.

1042 Q. What I mean, Mr. Pulver, is this: Did you allow any decree to be entered against you until the papers which I now hand you (handing witness papers) had been executed and delivered?

A. Why, I think this agreement had been entered into before the settlement was made, but I would rather confer with my attorney as to dates of decrees entered, before stating positively.

Q. But you do feel sure, do you not, that the terms of your settlement with Wm. Wrigley Jr. Company had been agreed upon before you authorized or permitted a decree to be entered against you in court?

A. Why, yes, I should say.

Q. In the present case certain interrogatories were propounded to the Wm. Wrigley Jr. Company, to be answered by Wm. Wrigley, of that Company, in behalf of the L. P. Larson Jr. Company, relating to the litigation brought by the Wm. Wrigley Jr. Company against you and the Continental Vending Company in the Western District of New York and the same parties and one Blauvelt in the Southern District of New York; these interrogatories were such that the District Court at Chicago, where the present suit is pending, required the Wm. Wrigley Jr. Company to produce the testimony taken in the suits in which you were concerned, together

1043 with copies of the pleadings and the contracts of settlement. It was also required of the complainant that it should answer as to the consideration paid for the settlement. In pursuance of the order of Court, certain carbon copies of testimony purporting to have been taken, of contracts purporting to have been entered into, have been produced. These contracts are not signed, and have certain blanks therein. I hand you a contract (handing witness paper) therein purporting to bear date the 19th day of December, 1913, wherein Wm. Wrigley Jr. Company and yourself are parties, and I ask you whether this is a true copy of the contract actually executed by the parties, with the exceptions which I have noted, namely, the signatures and the blank as to the consideration?

A. I haven't my contracts here with which to compare the copy handed me. If Mr. Offield gave you what purported to be a copy of the contracts as executed, with the exceptions noted, I have no doubt it was a true copy.

Q. I offer this contract in evidence, and ask that it be

marked "Larson Exhibit No. 10, March 21st, 1916," and made a part of this deposition.

I hand you a second contract, bearing the same date, between Wm. Wrigley Jr. Company, Frank F. Pulver and James R. Offield, and ask you if that is a true copy with
1044 the exception of the filling in of the signatures, of a contract entered into between the parties named, at about the time it bears date (handing witness paper)?

A. I have not my original contract with me. If Mr. Offield gave you this paper or a copy of which this is a copy, I do not doubt it is accurate.

Q. I offer this paper in evidence and ask that it be marked "Larson Exhibit No. 11, March 21st, 1916", and made a part of this deposition.

I next hand you what purports to be a copy of a contract between James R. Offield and the Continental Vending Company, the B. G. Adams Company, the Compton Gum Company and the Digesto Company, and ask you if it is a true copy of the contract executed by the parties named, with the exception of the filling in of the signatures (handing witness paper)?

A. I have not the original so as to be able to make any comparison, and can only say if Mr. Offield furnished with a paper of which the paper handed me is a copy, I have no doubt of its accuracy.

Q. I offer the paper referred to in evidence and ask that it be marked "Larson Exhibit No. 12, March 21st, 1916," and made a part of this deposition.

Q. What were these several companies which I have
1045 named as signers of the last agreement with Mr. Offield?

A. They were companies incorporated to put out certain brands of chewing gum.

Q. State whether they were all owned and controlled by you?

A. I owned practically all the stock in all the companies.

Q. You mean by that, do you not, that you owned all of the stock in all of the companies except such qualifying shares as you may have placed in the hands of subordinates or employees for the purpose of maintaining or preserving a corporate existence?

A. At the time these papers were signed I did.

Q. State whether or not, in your opinion, Mr. Wrigley or the Wrigley Jr. Company was the originator of the carton

which was set out in the suits brought against you and the Continental Vending Company?

A. If you refer to the box in which he packed his spearmint gum, I am of the opinion that the first box of this kind that ever came to my notice was used by Adams & Son, of Brooklyn, New York, on their Tutti Frutti five-stick foil package. A box similar to that kind is used by the Adams Company to-day.

Q. State whether or not you made any measurement of the two boxes to which you referred in your last answer,
1046 and, if so, with what result?

A. They are almost identical as to size, the only difference being the color scheme of either the box or the package contained therein.

Q. State whether it is a fact that for many years gum has been largely made by machinery and that thereby the size of the stick, the number of sticks in the package and the number of packages in a box or carton has been largely the same with different manufacturers?

A. I believe the introduction of machinery for wrapping and scoring the gum and breaking the gum has had a great deal to do with the similarity in size and style of wrapping, as there are standard machines for doing that work now.

Q. I think I neglected to introduce in evidence the final decree entered in said cause and which I have heretofore handed you. I now offer the same in evidence and ask that it be marked "Larson Exhibit No. 13, March 21st, 1916," and made a part of the record.

A. I assume, as I have with reference to other papers, that if Mr. Offield produced the paper referred to, it is accurate.

Q. You may state whether or not there has been any agreement between you and the Wm. Wrigley Jr. Company, or any person representing it, that the amount paid you in December, 1913, should be kept secret or not disclosed?

1047 A. Mr. Offield promised me that he would not tell.

Q. You may state whether or not he requested you at any time not to tell?

A. I do not remember any such request.

Q. And then, if I understand you, upon Mr. Offield's arrival, if he will consent to the disclosure by you of the consideration paid and promised by the complainant in the cases in New York against you, you will not object to answering a question calling for a statement of the consideration?

A. I do not think that Mr. Offield will object, and I cannot see wherein the amount that was paid me would benefit the Larson case, as I think that it is my own private affair.

The hearing was adjourned until March 22, 1916, at 10:00 A. M.

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1048 The hearing was resumed, pursuant to adjournment, on March 22, 1916, at 10:00 A. M., there being present Mr. Charles H. Aldrich, Solicitor for Defendant, and Mr. James R. Offield, Solicitor for Complainant.

Mr. Pulver testified further as follows, being question by Mr. Aldrich:

Q. I find that I failed to ask you if you had any agents from 1892 to 1898, and if so, who and in what part of the country they sold your spearmint product.

A. It's so long ago that I cannot tell in what part of the country my gum was sold, but I had agents in Troy, by name of Schwartz, Hall, Bennett, and that is all I can recall.

Q. Where did Mr. Bennett sell the gum?

A. In New York and Brooklyn and up and down the Hudson River, to the best of my recollection.

Q. And in what locality did Mr. Hall sell the gum?

A. In the same territory, and he also travelled over into Pennsylvania.

Q. State whether or not you had an agent by the name of J. M. Collins at any time.

A. When in Rochester we had J. M. Collins and Mr. Adams, Eggleston and some others—I don't know who they were.

Q. Were they local salesmen or did they sell in States
1049 other than New York.

A. They were travelling salesmen. They handled the gum as a side line. The local salesman's name was Sidney Greenslad; although agents sold the gum wherever they could.

Q. Who were your agents or distributors in Chicago during these years?

A. I don't know—some of the road agents that went in there sold the gum—I don't know who.

Q. During the years 1901 to the date when you sold in December, 1913, can you state from recollection in what cities and states the Digesto product had been sold?

A. Why, the last few years we covered the whole United States.

Q. In your testimony given in the case brought by Wm. Wrigley Jr. Company against the Digesto Company, yourself and one Charles E. Blauvelt, as the same has been produced by Mr. Offield under the order of court, I find cross question 125 and the answer thereto as follows:

"During the years 1901 to date, can you state from recollection in what cities and States the Digesto product has been sold?"

Answer: "They are too numerous to mention; in every State in the Union and every city in the United States."

You may state whether you recall that you were so interrogated and so answered.

1050 A. I was to interrogated, but did not mean that my gum had been sold in all the cities and states of the United States from 1901 up to the time that question was asked, which has something like 1912, as in 1901 I had just commenced to push Digesto; but in 1912 it was sold practically all over the United States.

Q. As I have understood your testimony, you started the Digesto about 1898. Is that correct?

A. No, that is not correct, as I did not use the name Digesto until I had severed my connection with the Pulver Chemical Company, which was somewhere near 1901, and then used the word Digesto in place of the word Pulver on the package.

Q. As I have understood you, the color scheme, number of sticks in the package, method of wrapping of the Pulver product from 1891 to 1901 was identical with the Digesto package thereafter used, and the only change made was in the substitution of the word Digesto and the addition of the words "Its lasting flavor wins favor." Is that correct?

A. That is correct.

Q. State whether or not you were, during the years you were engaged in the gum business, seeking at all times to extend your trade as rapidly as your means and ability would enable you to do so.

A. Why, yes.

Q. And I understood you yesterday to say, in effect,

1051 that in the later years you felt that you were aided in this extension of your trade by the extensive advertising campaign of the Wrigley Company. Was that correct?

A. Up to 1908 or thereabouts my business was more or less

in financial difficulties and at that time the Wrigley Company's extensive advertising campaign created a demand for spearmint gum, and it was only necessary for me to trail along and get the business.

Q. Then you would answer my question substantially in the affirmative, would you not?

A. Oh, yes.

Q. In your testimony on yesterday you expressed some uncertainty as to whether or not in your conversation with Mr. Wrigley when you first met him in Chicago, and at the time when he was on Kenzie Street, you told him that you were selling gum or anything about what gum you were selling. When did you first, Mr. Pulver, have any doubt about telling Mr. Wrigley about your gum?

A. Why, I haven't any doubts, but I don't recall now of telling him. I do recall that to demonstrate to Mr. Wrigley the sale of these pitchers, that some of his gum was sold to a dealer near by by Mr. Wrigley and myself.

Q. I find in the depositions produced in the cause referred to in a prior question that you were asked the following questions, and gave the following answers:

1052 Cross Question 133: "At the time you met Mr. Wrigley in about 1896, did you have any conversation with him with reference to the gum business?"

Answer: "I told him that I represented the Silver Metal Company, and I also sold chewing gum, and that I was putting out a water pitcher and suggested his using the chocolate pot, copy of which I produced herewith."

Cross Question 134: "Was anything said by Mr. Wrigley at that time with reference to his being engaged or engaging in the gum business?"

Answer: "He said that he was just starting in the gum business and was having his gum made."

Cross Question 135: "Was there anything said at that time with reference to spearmint gum, or did you at that time show Mr. Wrigley any of your products?"

Answer: "It is so long ago that I could not state positively just what was said. I had the gum with me. I told him a scheme I had selling the gum with a silver water pitcher. That was what induced him to buy the chocolate pot from me, and he thought he could sell the same to soda fountains. I do remember that he had the Juicy Fruit package, which was, and is identical with the Adams' Tutti Frutti and the Cali-

fornia Fruit packages, as far as their color scheme, size
1053 of package and style are concerned; and also had a pep-
sin gum, which demand was created by Beeman. There was also a large demand for Fruit gum, which helped the sale of Wrigley's similar and subsequent packages of Juicy Fruit and Pepsin."

Do you recall, Mr. Pulver, that you were so interrogated and so answered?

A. Those questions were asked some three or four years ago, and if the attorney for the defendant has correctly read them, I think they are so.

Q. I find the following question and answer reported in the deposition given by you in the cause heretofore mentioned:

Cross question 136: "When did you next have a conversation with Mr. Wrigley?"

Answer: "I think the house refused to ship him the goods, meaning the chocolate pot, and asked me to call on him and get a statement. Mr. Wrigley had a very small place then and was located on Kinzie Street, near the Chicago and Northwestern Depot, and he did not look like a very good risk. Mr. Wrigley told me that he had been buying premiums from other houses, and I wrote my house that I would guarantee the account, so they made the shipment. This meeting was about a week or ten days after the first meeting when I took the order for the chocolate pots."

Cross Question 137: "Did you have any conversation
1054 with him at that time with reference to chewing gum?"

Answer: "Not that I recall."

Cross Question 138: "When next did you have a conversation with Mr. Wrigley in which Chewing gum was mentioned?"

Answer: "In 1904—1903 or 1904—I met Mr. Wrigley in Chicago and sold him some buttons to be used during the Roosevelt campaign; that is, I made a price, and he later gave the order to our agent. At that time he asked me if I was connected with the gum business, and I told him I was putting the Digesto brand on the market."

Cross Question 139: "Did you show any of your Digesto packages to him, and was anything said at that time about the spearmint flavor?"

Answer: "My Wrigley said that he was familiar with the Digesto brand but that he did not know that I was making it. I did not show him any packages, but amongst my samples I had a mirror, on which the Digesto brand was depicted, and I believe that I gave them a sample of it."

Cross Question 140: "Was there anything said at that time with regard to spearmint flavor?"

Answer: "The spearmint flavor was shown on the mirror. I do not recall his mentioning the spearmint flavor at that time."

1055 Do you recall, Mr. Pulver, that you were so interrogated and so answered?

A. I distinctly remember guaranteeing the account for Mr. Wrigley, and also meeting him in about 1903 or 1904 and selling him buttons, and also remember there was a mirror among the samples, on which the Digesto gum was depicted in one color, and believe that it was spearmint gum, although we made three flavors—spearmint, peppermint and wintergreen. If you are reading from a correct copy of the testimony taken in the former case, I undoubtedly so testified.

Q. What do you mean by saying that the mirror showed the spearmint package in one color?

A. Why, I think the mirror showed the package in green—that is, instead of red and green on the package, it depicted the package in one color, which is green.

Q. It was not a fac-simile, then, of your package?

A. No, it was not a fac-simile, as the package itself was printed in red and green, and the picture did not show the color scheme of the package.

Q. But you do recall that Mr. Wrigley said in this conversation that he was familiar with the Digesto brand? That is correct, is it not?

A. Yes.

Q. I read farther from your examination in the case heretofore referred to:

Cross Question 141: "Did you at any subsequent time
1056 have a conversation with Mr. Wrigley in which the matter of a spearmint flavor was discussed?"

Answer: "Mr. Wrigley called on me in Rochester, N. Y., in 1909. I told him at that time that I understood that he was suing the Grove Company, and he said he was. I told him I had the right, if there was such a thing, to the color scheme used on his package, and he said: 'Well, I am not suing you' I told him that I had offered to enter into the Grove case, and he asked me to keep out of it and claimed that Grove package and box was identical with his."

Do you recall that you were so interrogated and so answered?

A. I do.

Q. And does the answer which you there gave correctly represent your conversation with Mr. Wrigley on the occasion referred to?

A. It represents a portion of it.

Q. Do you now have a recollection of other things that were said in 1909 on the occasion referred to, and if so, you may state upon the record what was said?

A. Why, Mr. Wrigley and Mr. Cox came to Rochester to investigate a substitute for chicle that I was manufacturing, and we met in an office in the Livingston building. After trying samples which I submitted to him, he asked me to ship him samples of this substitute and wanted to know the
1057 price I set on the formula. I gave my price at that time of $100,000 and he said he would consider it.

Q. You may state whether or not your Digesto package was copyrighted, and, if so, at or about what time?

A. The package was not copyrighted, but the word "Digesto" was coined and copyrighted by me, the copyright being taken out about 1906.

Q. State whether or not you correctly set out the date and number of the copyright in the circulars issued by you, entitled "A little history" and "A few facts," which have already been introduced in evidence?

A. I did.

Q. And now, Mr. Pulver, I would ask you to state upon the record what was the consideration paid and promised you by the Wm. Wrigley Jr. Company at the time the sale was made in December, 1913?

A. Two hundred and fifty thousand dollars—New York draft for $100,000, five interest bearing notes of $30,000 each, payable one note each year for five years, two of which notes have been paid and interest on all of them.

Q. Was that the total consideration paid or promised?

A. That was the total consideration.

The hearing was resumed at 2:00 P. M., pursuant to adjournment from 11:30 A. M. Mr. Pulver further testified as follows: being questioned by Mr. Aldrich.

1058 Q. I hand you herewith (handing witness paper) what purports to be a copy of your trademark, together with your statement and declaration for procuring the same, and ask you whether it is a copy of the trademark referred to by you in your testimony this morning.

A. It is.

Q. I offer this trademark in evidence, and ask that it be

marked "Larson Exhibit No. 14, March 22nd, 1916," and made a part of the deposition in this case.

Mr. Pulver, you had some correspondence in 1913 with Mr. Larson, and prior to your settlement, did you not?

A. I did.

Q. I hand you herewith a letter (handing witness paper), dated Rochester, N. Y., January 29th, 1913, upon a paper of the Digesto Gum Company, addressed to Mr. L. P. Larson, Jr., 29 So. Clinton Street, Chicago, Ill., and signed "F. F. Pulver," and ask you if this is a letter written by you.

A. It is.

Q. I offer the letter in evidence and ask that it be marked "Larson Exhibit No. 15, March 22nd, 1916," and made a part of the deposition of the witness.

Q. You refer in this letter to the enclosure by you of a circular which you are sending to the trade. Was that the circular entitled "A little history," which was introduced in evidence on yesterday?

1059 A. I think it is, as I only sent out one circular depicting the packages mentioned in the letter.

Q. Mr. Pulver, have you now any reason to doubt the truth of any statement made by you in this letter of January 29th, 1913?

A. No, sir.

Q. I hand you a letter dated January 31st, 1913, addressed to Mr. L. P. Larson, 29 South Clinton Street, Chicago, Ill., and signed "F. F. Pulver," and ask if you also wrote this letter (handing witness letter).

A. I did.

Q. I offer the letter in evidence and ask that it be marked "Larson Exhibit No. 16, March 22nd, 1916", and made a part of this deposition.

I hand you a letter dated Rochester, N. Y., August 27th, 1913, addressed to Mr. L. P. Larson, 321 North Sheldon Street, Chicago, Ill., and signed "F. F. Pulver," and ask if you also wrote this letter (handing witness letter)?

A. I did.

Q. I offer the letter in evidence and ask that it be marked "Larson Exhibit No. 17, March 22nd, 1916," and made a part of the deposition.

Mr. Pulver, I will ask you with reference to the letter of January 31st, which you have identified, whether you have ever had any reason, or have any reason now, to doubt the truth of the statements made by you in this letter?

1060 A. That is the truth, to the best of my knowledge and belief, as up to the time that Mr. Wrigley commenced his extensive advertising, the question of a color scheme had never been brought into court, to my recollection. No color scheme was advertised as extensively and featured as Mr. Wrigley featured his package. The color scheme of Adams' Tutti Frutti, California Fruit, manufactured by Primley, and Wrigley's Juicy Fruit, and a gum turned out by the Franklin-Caro Company, of Richmond, Va., are identical and have been for several years. Of course, none of these gums are extensively advertised by any of the parties manufacturing same.

Q. But I understand you to say in this letter, and that you have also testified, that the color scheme was original with you?

A. That is true, but I did not object to Mr. Wrigley's using it.

Q. I suppose that you naturally did not object to his advertising it?

A. No; I was rather pleased, as the advertising that he did made the sale of Digesto Spearmint Gum possible; and from the time that he commenced to advertise my business grew very rapidly on the spearmint package. In about 1909 I did more business in spearmint chewing gum in one year than I had in the whole history of my spearmint trade before; and in 1913 I did more business in spearmint gum than I had
1061 in all the years before in that particular flavor.

Q. But, as I understand you, you at all times adhere to and used the same package and color scheme that you had used before Mr. Wrigley entered the gum business, excepting only the word "Digesto" instead of "Pulver," and the addition of the words, "Its lasting flavor wins favor," which you mentioned in your testimony this morning. I do not refer by this question to the gum manufactured at Elgin, Illinois, where, as I understood you, you used the rubber band instead of a counter band.

A. I do not know when Mr. Wrigley started in the gum business, but Mr. William Scatchard claimed that they put the spearmint gum on in about 1892 and that the gum contained a counter band printed in red and green. I had no way of disproving Mr. Scatchard's testimony, and as I did not put it out until 1891 and in the fall of that year, and then only a few boxes, I thought he started, and he was a partner of Mr. Wrigley at the time, to use the counter band about the same time that I did.

Q. In his letter of January 29th, 1913, you used this language, "We do not believe his present package was put on the market until about 1908, although he claims 1906."

A. In referring to his present package, I meant the package with the individual wrapped pink sticks. His original package was a foil wrapped package; but my attorney informed me that it was not the original sticks wrapped in pink paper that was claimed by Mr. Wrigley, but the color scheme of red and green on a white background, used as a counter band; and I do not believe he adopted the pink individual labels until about 1907 or 1908.

1062

Q. Will you explain, Mr. Pulver, just why, in your answer to the last question, you have sought to date back Mr. Wrigley's use of the word "spearmint" and the color scheme which you have mentioned to 1892, when the bill filed against you, both in the Southern District of New York and the Western District of New York did not claim an earlier date than "On or about the year 1894?"

A. I have always given my competitors the benefit of any doubt and as Mr. Scatchard claimed 1892, I was willing to let them go back to that date.

Q. You have stated in your testimony taken in the case against you in the Southern District of New York that you found Wm. Wrigley, Jr., just beginning, or about to begin, the gum business in 1896.

A. Well, I don't believe I stated positively that it was 1896, but it was along there some place that I first met him.

Q. And I understood you to testify that you never saw any of his spearmint gum until several years after that date. Is not that a fact?

1063

A. That is true, as Mr. Wrigley might have had spearmint gum on at the time and I not see it, as he was not a very large handler of gum at the time.

Direct examination closed.

*Cross-Examination by Mr. Offield.*

The entire direct examination of the witness is objected to upon the grounds:

1st. That is is improperly taken; and

2nd. That the subject matter therein contained is irrelevant and immaterial to any issue in this cause.

3rd. The exhibits offered in evidence during the direct examination are all objected to, on the grounds:

First. That they are irrelevant and immaterial; and

Second. That they are not the best evidence of the facts therein contained.

Third. They are not properly proved.

The cross-examination is conducted subject to the foregoing objections.

By Mr. Aldrich: Without impropriety I think I may ask whether objection is taken by counsel to the direct transcription of the evidence as taken by the stenographer upon the machine.

Mr. Mr. Offield: No objection is taken on the point stated by Mr. Aldrich.

1064 Q. When you were at Elgin, Illinois, at which time I understand you first attempted the manufacture of chewing gum, in what business were you engaged at that time?

A. I was a watchmaker, engaged in the finishing department known as "B" in the Elgin Watch factory.

Q. And when you went to Troy, New York, in what business were you there engaged, in addition to the manufacture of chewing gum?

A. Managing a retail jewelry store for the J. R. White Jewelry Company.

Q. And after leaving Troy, New York, in what businesses were you thereafter engaged from time to time or year to year, in addition to the manufacture of chewing gum?

A. Why, in Rochester, I cannot state positively the date, but know that it was shortly after I came to Rochester in the spring of '94, I took up the sale of silver ware on a commission basis for the Oswego Silver Metal Company, of Oswego, New York. This lasted until my brother and I formed a co-partnership, which was about '98. All my time and attention from that time until about 1900 or 1901 was given up to the manufacture of chewing gum and vending machines and the sale of same. In about 1902 I started a factory for the manufacture of advertising novelties and printing on celluloid. This lasted to 1905 or thereabouts, at which time I gave all my attention to the manufacture of chewing gum.

1065 During your co-partnership relations with your brother, at which time you were engaged in the manufacture of vending machines, did you make chewing gum adapted to be vended in these machines, of a spearmint flavor?

A. No, sir.

Q. What year was it when you first devoted yourself exclusively to the manufacture and sale of chewing gum?

A. Well, at various times; the first after I left the employ of the Elgin Company, in 1890, to the fall of 1891, at which time I did work for my brother, such as cleaning and repairing watches and sold chewing gum; and again after I left Troy, New York, for a period of a year or so, while in Rochester, I was exclusively engaged in the manufacture of chewing gum to the time I took up the silver ware line, which was somewhere around '95 or '96; and for a period of one or two years I divided my attention between the sale of silver ware and the manufacture and sale of chewing gum. Then from that time until 1902 about I gave my time exclusively to the manufacture and sale of chewing gum and vending machines, at which time I started a factory for the manufacture of advertising novelties and divided my time between the gum and the novelty business for a period of three or four years. I then returned to the chewing gum business exclusively and continued until 1913, about the 20th of December of that year.

1066 Q. Up until the time that you put the Digesto brand of chewing gum upon the market, did you keep any records which would show the amount of chewing gum made by you prior to that time?

A. No, not that I know of.

Q. Did you keep books of any kind whatsoever, showing the volume of business done, the names of your customers, or other facts in connection with your business prior to 1902?

A. Yes; we kept books, but I don't think we had any record of the sale of any one flavor.

Q. The books have never been produced by you, have they?

A. No, sir.

Q. When did you last have those books?

A. I had the records up to about 1909 of the business I did prior to that time, but not the business of the Pulver Chemical Company. These books and other records were destroyed in a fire about 1909.

Q. Now, as I understand your testimony, at the same time that you were producing chewing gum of a spearmint flavor and using thereon labels such as "Larson Exhibit No. 1" label, you were also producing peppermint and wintergreen flavors of chewing gum, and using labels similar in all respects to Exhibit No. 1, except in place of the word "spearmint" you used either the word "peppermint" or the word "wintergreen." Is my understanding correct?

A. It is.

1067 Q. Now, in what year was it that there was a first noticeable increase in the sale of your spearmint chewing gum?

A. About 1908.

Q. And prior to 1908 had the sales of your wintergreen and peppermint chewing gum been greater or less than the sales of your spearmint gum?

A. The wintergreen and peppermint flavors were the largest sellers up to that time.

Q. Is it not a fact that prior to 1908 the sale of spearmint gum by you was of a most limited character?

A. Well, the sales were small, as there was not any great demand for it. The public was educated to chew peppermint and wintergreen.

Q. Prior to 1908 was it customary to market spearmint gum in boxes containing nothing but gum of that flavor, or was it your custom to mix spearmint gum in with gums of other flavors, so as to give the dealer a box of assorted flavors?

A. We marketed both ways, but the assorted flavor box was in favor with the retail dealer and any flavor that was not sold by the dealer we would exchange and give him the flavors that were most demanded in his territory. The idea of putting assorted flavors out was used, and is used to-day, by a great many manufacturers of chewing gum.

Q. But it was difficult to sell spearmint chewing gum alone prior to 1908, was it not?

1068 A. In a great many localities the merchants would not take it, even in an assortment, and in other localities they would take one box in five with spearmints in.

Q. Is it not a fact that prior to 1908, and at such times as you were then engaged in the gum business, it was your practice to mix a batch of chewing gum and thereafter put it in cartons and then go out on the road and sell this gum and not manufacture again until your stock had been sold out?

A. In the inception of the business that's true.

Q. And between what years would you call the inception of the business?

A. From 1889 to '96. After that business increased and we run our factory nearly all the year; but at all times I was either in the manufacture or sale of the gum.

Q. In what year was it that you placed upon the market a spearmint chewing gum under the trade name of "Teddy Bear?"

A. It was placed on the market in about 1907.

Q. And for how long a period did you manufacture and sell chewing gum under that name?

A. That was placed on the market as a flier during the Roosevelt administration and the public were crazy for Teddy bears and we gave a Teddy bear with the gum. This lasted until about 1908 or 1909.

Q. In your answer to the first question on page 26 of
1069 your typewritten deposition herein, you stated that you gave Mr. Wrigley a price on your formula of $100,000. Was any mention made at that conversation, either by you or Mr. Wrigley, regarding the sale of anything else other than the formula?

A. Yes; he was to have the plant, gum business and all, as I would have retired from business at that time if I had had $100,000.

Q. How did Mr. Wrigley and Mr. Cox happen to go to your office?

A. Mr. Wrigley and Mr. Cox did not go to my office, but to the office of Walter Strowger, which office was in the livingston building, on Exchange Street, Rochester, New York. Mr. Strowger was the one who suggested writing the Wrigley Company and offering the sale of my formule to them, and at the request of Mr. Strowger, Mr. Wrigley and Mr. Cox came to Rochester, and during the conversation Mr. Wrigley asked the price of the formula. I told him that I would give it to him for $100,000, and he smiled and said, "You ought to give the whole thing with it." I told him all right—everything goes for $100,000. The sample of the base was sent to him, and I think that he paid for same.

Q. At the time your business was sold to Wrigley Jr. Company, in December of 1913, you were connected with the Digesto Company, were you not?

A. I was.

1070 Q. You were also connected with the B. G. Adams Co., a separate corporation, manufacturing and selling spearmint chewing gum?

A. I was.

Q. You were also connected with the Compton Gum Company, a separate corporation, manufacturing and selling spearmint chewing gum?

A. I was.

Q. About what was the volume of business done in Digesto Chewing Gum in the year 1913?

A. About a quarter of a million.

Q. You were practically the sole owner of that business, were you not?

A. I was.

Q. And approximately what were your net profits in the year 1913 on the Digesto business?

A. Upwards of $40,000.

Q. And is it not a fact that the volume of business done in the year 1913 by you was considerably larger than the volume of business done in the year 1912?

A. About twice the business of 1912.

Q. And is it not a fact that you had every reason to suppose the volume of business that you would do in the year 1914 would be considerably larger than the year 1913?

A. I think it certainly would have been.

Q. You had made preparations for a greatly increased output had you not?

1071 A. I had ordered machinery enough to more than double the business of 1913; had I continued to 1914, I would undoubtedly have doubled the business.

Q. You practically did no advertising? Isn't that a fact?

A. Nothing but display cards and circulars.

*Redirect Examination by Mr. Aldrich.*

Q. You have stated in answer to question on cross-examination that the B. G. Adams Co., and Compton Gum Company were also manufacturing and selling chewing gum with a spearmint label. Were these companies running a manufactory of their own, or was their gum manufactured at the same place as the Digesto gum?

A. The Adams and other gums were manufactured at the same place the Digesto gums were manufactured.

Q. And in your estimate of the volume of business done in 1913 and 1912 and prospective business for 1914, were the B. G. Adams and Compton gums included?

A. The total sales of both of those companies wouldn't exceed $4,000, as they were sales companies got up to sell gum under the brand of the Compton and Adams companies.

FRANK F. PULVER

By Mr. Aldrich: These are all the depositions to be taken under the two notices served upon Mr. Offield.

1072 State of Florida, }
County of Pinellas. } ss.

I, M. Annie McRae, a Notary Public in and for Pinellas County, State of Florida, hereby certify that the above and foregoing depositions were taken by me and transcribed directly on the typewriter by request of parties; that said depositions were taken at No. 476 Central Avenue, St. Petersburg, Florida, commencing on March 21st, 1916, at ten o'clock A. M., pursuant to the annexed notice, and were continued thereafter from day to day between the houds of 10:00 A. M. and 4:00 P. M. as adjourned by consent of counsel, until the completion thereof; that I am not of counsel nor in any way interested in said cause.

That the above and foregoing is a true and correct statement of the testimony taken under this commission, the witness being by me first duly sworn and cautioned to tell the truth, the whole truth and nothing but the truth in said cause, and of the exhibit produced and made a part thereof.

Witness my hand and Notarial seal, this 22nd dav of March, A. D. 1916.

M. ANNIE MCRAE
*Notary Public.*

(Notarial Seal)

My commission expires December 10th, 1916.

Notary fees, $47.50, paid by the defendant.

M. ANNIE MCRAE

1073 Exhibits 4, 5 & 6 attached hereto but not copied.

1074 EXHIBIT 7.

UNITED STATES PATENT OFFICE.

Wm. Wrigley Jr. Co., of Chicago, Illinois.

Trade-Mark for Chewing-Gum.

Statement and Declaration.

No. 64,816, Registered Aug. 20, 1907.

Application filed April 8, 1907. Serial No. 26,575.

STATEMENT.

To all whom it may concern:

Be it known that Wm. Wrigley, Jr. Co., a corporation duly organized under the laws of the State of Illinois, and located in the city of Chicago, county of Cook, and said State, and doing business at No. 88 Michigan avenue, in said city of Chicago, State of Illinois, has adopted for its use the trade-mark shown in the accompanying drawing, for chewing gum, in Class No. 47, Confectionery.

The trade-mark has been continuously used in the business of said corporation since January 1, 1900.

The trade-mark is applied or affixed to the goods, or to the wrappers or packages containing the same, by printing on said wrappers or packages the trade-mark.

MR. WRIGLEY JR. CO.,
By WILLIAM WRIGLEY, JR.,
*President.*

1075 DECLARATION.

State of Illinois, } ss.
County of Cook. }

WILLIAM WRIGLEY, JR. being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by said corporation in commerce among all the States of the United States; that the drawing presented tryly represents the trade-mark sought to be registered; and that the specimens shows the trade-mark as actually used upon the goods.

WILLIAM WRIGLEY, JR.

Subscribed and sworn to before me this 5th day of April, 1907.

EDWARD W. ECKERLY,
(L. S.) *Notary Public.*

1076 Trade-Mark.

No. 64,816. Registered Aug. 20, 1907.

Wm. Wrigley Jr. Co.

Chewing-Gum.

Application filed Apr. 8, 1907.

(Picture of a spear)

Witnesses,
L. F. Mann,
James R. Offield.

Proprietor,
Wm. Wrigley Jr. Co.
and
By Offield, Towle, Linthicum
Atty's.

Exhibit 10. 1077 **EXHIBIT 10.**

This Agreement, made and entered into this 19th day of December, 1913, by and between Wm. Wrigley, Jr. Company, a corporation of the State of West Virginia, party of the first part, Frank F. Pulver, of Rochester, New York, party of the second part, and James R. Offield, of Chicago, Illinois, party of the third part, Witnesseth:

Whereas, a certain agreement has been entered into between Wm. Wrigley, Jr. Company as party of the first part and Frank F. Pulver as party of the second part and various corporations with which said Frank F. Pulver is allied as other parties thereto, said agreement being executed on even date herewith, and

Whereas, James R. Offield has entered into a certain agreement wherein he is the first party and Frank F. Pulver is the second party thereto, various corporation with which said Frank F. Pulver is connected being other parties to said agreement and executed upon even date herewith, and

Whereas, certain sums of money are to be paid the said Frank F. Pulver as provided for in paragraph 4th of the agreement between the said James R. Offield and Frank F. Pulver and others; and

Whereas, it is mutually desired between the parties to have it specifically defined as to what may or may not consti-
1078 tute a breach of some of the clauses provided in both of said agreements.

Now, Therefore, In consideration of the sum of One Dollar ($1.) moving between the parties hereto, and other good and valuable considerations, as expressed by and in the agreements herein referred to, the parties hereto have agreed as follows:—

1st: The party Frank F. Pulver agrees that if on or prior to January 1st, 1919, there are any outstanding debts against The Continental Vending Co., B. G. Adams Co. and Compton Gum Co., for contracts or obligations assumed or entered into by said corporations or any of them and enforceable against the holders of the stock of said corporations, subsequent to the execution of this agreement, that the said note due and payable on the 1st day of January, 1919, may be withheld from payment thereon until the obligation is paid by the said Frank F. Pulver, or release therefrom obtained, or the amount of the obligation may be deducted from and offset said note.

2nd: The party of the second part agrees that in the event he should violate any of the provisions of the ninth paragraph of the articles of Agreement entered into between Wm. Wrigley, Jr. Company and Frank F. Pulver as the second party thereto, that the said Wm. Wrigley, Jr. Company may withhold the payment of any notes that may be then due the said Frank F. Pulver and said Wm. Wrigley Jr. Com-
1079 pany shall have the right to bring such suit or suits as it may deem desirable for the full protection of its rights, as provided for in said agreement, of which Paragraph 9 forms a part.

3rd: It is mutually understood and agreed between the parties that in the event the notes as provided for and given in the contract between the said James R. Offield and Frank F. Pulver, are in default upon the date due, or any of said dates, and that unless said notes, or any of them, are paid within thirty (30) days after notice and demand for the payment thereof, then the said Frank F. Pulver may again engage in the manufacture and sale of chewing-gum and his rights to the form of trade-dress for the marketing of chewing-gum as evidenced by "Exhibit B", shall be equal and co-extensive with the rights of Wm. Wrigley, Jr. Company, in that both Wm. Wrigley, Jr. Company and Frank F. Pulver may place upon the market chewing-gum wrapped in the manner of "Exhibits "A" and "B", respectively.

In Witness Whereof, the party of the first part has caused this agreement to be signed by its President and its corporate seal affixed hereto, and the second and third parties have signed the same and affixed their seals on this _____ day of December, 1913.

1080 WM. WRIGLEY, JR. COMPANY,

By_____

*President.*

_____(Seal)

_____(Seal)

Signed at Rochester, N. Y., this _____ day of December, 1913, in the presence of:

_____

_____

Exhibit 11.

1081

## EXHIBIT 11.

### ARTICLES OF AGREEMENT.

Whereas, Wm. Wrigley, Jr. Company, a corporation organized and existing under and by virtue of the laws of the State of West Virginia, is the alleged owner of certain trademarks, trade rights and trade-dress relating to Spearmint Gum as manufactured by it, a box of Wm. Wrigley, Jr. Company's Spearmint Chewing Gum being hereto attached, marked "Exhibit A" and made a part hereof, and

Whereas, various suits are pending relative to the trademark, tradename and trade dress rights and on account of unfair competition, wherein Wm. Wrigley, Jr. Company is complainant; and

Whereas, Frank F. Pulver, of the City of Rochester, State of New York, is the manufacturer of a chewing gum that is alleged to be so wrapped and the labels thereof so marked as to infringe the trade-mark, tradename and trade rights of Wm. Wrigley, Jr. Company; and

Whereas, Frank F. Pulver, has done business under his own and the assumed name of Di-Gesto Company; and

Whereas, Frank F. Pulver is also an officer of The Continental Vending Company, a corporation organized under the laws of the State of New York, and which is now using the assumed name of Di-Gesto Company; and

1082 Whereas, Frank F. Pulver is also an officer of B. G. Adams Co., a corporation organized under the laws of the State of New York, and formerly a co-partnership consisting of B. G. Adams and F. F. Pulver, doing business under the firm name and style of B. G. Adams Co.; and

Whereas, Compton Gum Co. is a corporation organized under the laws of the State of New York and Frank F. Pulver is an officer thereof; and

Whereas, Frank F. Pulver, Di-Gesto Co., The Continental Vanding Co., B. G. Adams Co. and Compton Gum Co., are all placing upon the market chewing gum alleged to be so wrapped as to infringe the trade-marks, tradenames, and trade rights of Wm. Wrigley, Jr. Company; and

Whereas, Henry H. Pulver was at one time associated with Frank F. Pulver in the manufacture and sale of chewing gum alleged to have been so marked and wrapped as to infringe the

trade-marks, tradenames and trade rights of Wm. Wrigley, Jr. Company; and

Whereas, it is desired to terminate the litigation above referred to and adjust the settle the difference of all parties concerned;

Now, Therefore, in consideration of the sums of One Dollars ($1.), by each of the parties hereto to each of the other parties hereto in hand paid, and for other good and valu-
1083 able considerations, it is hereby contracted and agreed by and between said Wm. Wrigley, Jr. Company, a West Virginia corporation, party of the first part, Frank F. Pulver, an individual, party of the second part, Di-Gesto Company, an assumed business name employed by Frank F. Pulver, party of the third part, and The Continental Vending Co., Henry H. Pulver, an individual, party of the fourth part, The Continental Vending Co., a New York Corporation and the stockholders thereof, each individually, namely,_____ party of the fifth part, B. G. Adams Co., a New York corporation and the stockholders thereof, each individually namely, _____ party of the sixth part, and Compton Gum Co., a New York corporation and the stockholders thereof, each individually namely,_____ party of the seventh part as follows, to wit:

1st: The second party, Frank F. Pulver, does hereby sell, assign, transfer and set over unto the party of the first part all his right, title and interest in the trade-mark, tradename and trade-dress of whatsoever kind and nature that he may have as appears upon the labels and the manner of wrapping the chewing-gum identified by the box of chewing gum hereto attached marked "Exhibit B", said second party representing to the first party and as a part of the consideration moving between the said first and second parties, that the second party has used substantially the same form of label, both as to design, color scheme, wording and markings, since the
1084 year 1891 and continuously therefrom to date and the said second party further representing and assuring the first party that no other person, firm, association or corporation has acquired any rights whatsoever in the tradenames, trade-marks and trade-dress identified by "Exhibit B", with the possible exceptions of the other parties to this agreement, and that as to such other parties no rights have been acquired

by any or all of them unless it be by the association of the second party with Henry H. Pulver, and said second party agrees that any or all rights that may have been acquired by said Henry H. Pulver are now the property of the second party and are herein sold, assigned, transferred and set over unto the first party.

2nd: The party of the fourth part, Henry H. Pulver, does hereby sell, assign, transfer and set over unto the party of the first part any and all rights which he may have acquired by virtue of his former relations with Frank F. Pulver in the tradenames, trade-marks or trade-dress identified by "Exhibit B".

3rd: The party of the third part, Di-Gesto Company, by Frank F. Pulver, does hereby sell, assign, transfer and set over unto the party of the first part any and all rights which it may have acquired by virtue of its former relations with Frank F. Pulver in the tradenames, trade-marks or trade-dress identified by "Exhibit B".

1085 4th: The party of the fifth part, the Continental Vending Co., a corporation duly organized under the laws of the State of New York, does hereby sell, assign, transfer and set over unto the first party all of the rights which it now owns or may have acquired in the tradenames, trademarks and trade-dress identified in "Exhibit B".

5th: The party of the sixth part, B. G. Adams Co. a corporation duly organized under the laws of the State of New York, does hereby sell, assign, transfer and set over unto the first party all of the rights which it now owns or may have acquired in the tradenames, trade-marks and trade-dress identified in "Exhibit B". and "Exhibit C".

6th: The party of the seventh part, Compton Gum Co., a corporation duly organized under the laws of the State of New York, does hereby sell, assign, transfer and set over unto the first party all of the rights which it now owns or may have acquired in the Tradenames, Trade-marks and trade-dress identified by "Exhibit B" and "Exhibit D".

7th: The second, third, fourth, fifth, sixth and seventh parties agree and consent, so far as they are concerned, that decrees may be entered as prayed for by Wm. Wrigley Jr. Company in the case of *Wm. Wrigley, Jr. Company* vs. *Di-Gesto Company* and *Frank F. Pulver,* now pending in the United States District Court for the Southern District of New York, and in the case of *Wm. Wrigley, Jr. Company* vs. *The*

*Continental Vending Co.* and *Frank F. Pulver,* now pend-
1086 ing in the United States District Court for the Western District of New York, the said Wm. Wrigley, Jr. Company waiving all claims for costs, profits and damages in said suits and said decrees to be entered at the cost of the said Wm. Wrigley, Jr. Company, and said Decrees to recite that all demands of the said complainant are satisfied and paid, and the said decrees are to be without costs, taxable or otherwise, to any of the parties.

8th: The second, third, fourth, fifth, sixth and seventh parties do agree to and with the first party that they will not at any time hereafter contest the claims of the party of the first part that the word "Spearmint" is a good and valid tradename or mark and that they will respect each and every right of the said first party thereto as well as the rights of the first party to its trade-dress as evidenced by "Exhibit A", and that they and each of them will not manufacture or sell a chewing-gum of any flavor in a trade-dress like the trade-dress of Exhibits "A", "B", "C" or "D", or in any such near resemblance thereto as would lead the ordinary purchaser to believe that the product as so manufactured by them, or either of them, is the product of the first party.

9th: The party of the second part agrees that he will not manufacture or sell any chewing-gum or substitute there-
1087 for within the United States, or any territory thereof, or the possessions thereof, or in the Dominion of Canada, for a period of twenty-five years (25) from the date of this agreement, and will not directly or indirectly acquire any interest in, or ally himself with, or form any business connection with any person or persons, or corporation or combination of persons, which shall be engaged in the chewing-gum business in any form, directly or indirectly, in any State or country in which the party of the first part at this time or at any time during the life of this contract holds trade-marks or trade rights relative to chewing-gum.

10th: The party of the first part agrees to dimiss the suit now pending in the United States District Court for the Northern District of Illinois, Eastern Division, in which Wm. Wrigley, Jr. Company is the complainant and F. W. Woolworth Company is the defendant, and at the complainant's cost, and the party of the first part further agrees that no suit or suits for infringement of any of the first party's trademarks, tradenames or trade rights shall be brought against any of the customers of any of the parties to this agreement

for the infringement of the first party's rights by reason of the sale of chewing-gum manufactured by the second, third, fourth, fifth, sixth or seventh parties and sold by said parties prior to the date of the execution of this agreement.

1088 11th: The second, third, fourth, fifth, sixth and seventh parties do hereby sell, assign, transfer and set over unto the first party the good will and business allied with the trade-marks, tradenames and trade rights or dress herein conveyed by each party.

In Witness Whereof, the parties hereto, at the cities of Chicago, Illinois, and Rochester, New York, have hereunto set their hands and seals on the _____ days of December, 1913, said corporations, by their duly authorized officers, who act under the direction, consent and authority of the Board of Directors thereof, who have duly authorized them as such officers so to act and bind said corporations, have caused these presents to be signed by their officers and their corporate seals to be hereunto affixed.

WM. WRIGLEY, JR. COMPANY,

By_____

_____(Seal)

Signed by Frank E. Pulver, Party of the Second Part, and Henry H. Pulver, this _____ day of December, 1913, in the presence of:

_____

_____

DI-GESTO COMPANY,

By_____

_____(Seal)

*Party of the Fourth Part.*

THE CONTINENTAL VENDING CO.,

By_____

1089 B. G. ADAMS CO.,

By_____

COMPTON GUM CO.,

By_____

1090 EXHIBIT 12.

## ARTICLES OF AGREEMENT.

Whereas, James R. Offield, of the City of Chicago, County of Cook and State of Illinois, is desirous of acquiring the properties and rights hereinafter more fully set forth, and

Whereas, The Continental Vending Company, a corporation organized under the laws of the State of New York, is the owner of certain property and engaged in the manufacture, of chewing-gum in the City of Rochester, New York, and

Whereas, B. G. Adams Co., a corporation organized and existing under and by virtue of the laws of the State of New York, is the owner of certain property and engaged in the manufacture of chewing-gum in the City of Rochester, New York; and

Whereas, Compton Gum Co., a corporation organized and existing under and by virtue of the laws of the State of New York, is the owner of certain property and engaged in the manufacture of chewing-gum in the City of Rochester, New York; and

Whereas, Di-Gesto Company, an assumed name adopted by Frank F. Pulver of Rochester, New York, and The Continental Vending Co., is the owners of certain property and engaged in the manufacture of chewing-gum in the City of
1091 Rochester, New York; and

Whereas, Frank F. Pulver, of Rochester, New York, is an officer of and stockholder in the aforenamed corporations, The Continental Vending Company, B. G. Adams Co., and Compton Gum Co., and has been actively engaged in the manufacture of chewing-gum for a long period of years; and

Whereas, it is desired by the parties hereto, to-wit: The Continental Vending Co., B. G. Adams Co., Compton Gum Co. and Di-Gesto Co., and Frank F. Pulver, to sell their respective properties and rights, except such properties as are hereinafter reserved by them;

Now, Therefore, in consideration of the sum of One Dollars ($1.) by each of the parties hereto to each of the other parties hereto in hand paid, and for other good and valuable considerations, it is hereby contracted and agreed by and between James R. Offield, party of the first part, The Continental Vending Company, party of the second part, B. G. Adams Co., party of the third part, Compton Gum Co., party of the fourth

part, and Di-Gesto Company, party of the fifth part and Frank F. Pulver, party of the sixth part, and the stockholders thereof and individuals thereof, as follows, to wit:

1st: The said first party agrees to pay to the order of Frank F. Pulver, the owner or having the control of all
1092 the stock in the above named corporations, parties of the second, third and fourth part, the sum of One Dollars ($1.) to be paid on the signing of this contract and on the completion of the inventory of said transfer of the property of the Continental Vending Co., B. G. Adams Co., and Compton Gum Company, including trade-marks and secret processes or formulas owned by any of said second, third or fourth parties, or by said sixth party, Frank F. Pulver, and said sixth party agrees to transfer the properties of Di-Gesto Company to the first party; the properties to be so transferred by the second, third, fourth and fifth parties to the first party being more particularly identified and set forth in the inventory hereto attached and marked "Exhibit A".

The said first party shall have possession of the premises and plants occupied by the second, third, fourth and fifty parties, for the purpose of removing the properties conveyed herein, upon the date of the execution of this agreement and shall pay such rent as the party or parties hereto are now obligated by lease to pay from the time possession is given to the 1st day of January, 1914.

2nd: The said Frank F. Pulver agrees to pay all of the bills payable now due, or to become due, on the liabilities and obligations already incurred or contracted for by the said second, third, fourth and fifty parties, and the said Frank F. Pulver will hold harmless, protect, reimburse and idem-
1093 nify the said first party from any and every loss, cost, expense or damage on account of any contract heretofore made, or any liability of any kind by or in the name of said second, third, fourth, fifth or sixth parties, or any of them.

3rd: The said second, third, fourth, fifth and sixth parties agree to transfer, by proper legal assignments, duly executed, all of their rights, title and interest in and to any and all trade-marks or tradenames owned by them, including the tradename or mark "Di-Gesto", together with the good-will and the business with which said trade-marks have been used and to deliver all testimony, legal documents and exhibits used or pertaining to any suits now pending against said par-

ties, or any of them, to the said party of the first part, and hereby make such transfer and agree to execute independent assignments of each and all such rights, trade-marks and goodwill for the purpose of recording the same and making them a public record.

4th: The party of the first part agrees to pay to Frank F. Pulver, personally and as representing the parties of the second, third, fourth and fifth part, the sum of _____ _____ Thousand Dollars ($ ), to be paid in five equal installments upon the first days of January, 1915, 1916, 1917, 1918 and 1919, and that the considerations so to be paid Frank F. Pulver in five equal
1094 installments, shall consist of five notes given the said Frank F. Pulver due upon the respective dates that the said installments are due, said notes to be signed by Wm. Wrigley, Jr. Company, Wm. Wrigley, Jr. and A. G. Cox.

5th: The parties hereto, their successors and assigns and legal representatives, guarantee, covenant and agree that all property and rights transferred by each to any of the others is free from any and all incumbrances, and that each party making such transfer has the right to transfer and sell the same, and each of said parties guarantee that it has the title to said property and rights so transferred and that each of said vendors will defend such title and hold the vendee harmless as to any claims against such property or rights, and that the successors, assigns and legal representatives of the parties hereto shall be bound by this agreement.

6th: The said Frank F. Pulver will assign and endorse to the party of the first part a sufficient amount of stock in the Continental Vending Company, B. G. Adams Co. and Compton Gum Co. to place the first party in control of fifty-one per cent (51%) of the stock of each of said corporations and that said first party may sell and assign said stock as he may desire.

7th: Said Frank F. Pulver agrees that at any time
1095 hereafter during the duration of this contract he will aid and assist the party of the first party in defending his properties and rights and the properties and rights of the second, third, fourth and fifth parties, owned by said parties prior to the execution of this agreement and herein transferred, and without cost to the first party, except as to travelling expenses or loss that the said Frank F. Pulver may be put to other than his time.

8th: Said Frank F. Pulver agrees that on or before the 1st

day of January, 1919, upon demand he will cause to be transferred or assigned to the first party all the outstanding stock of the corporations herein named and parties hereto and without further consideration.

9th: The first party herein releases any cause or causes or action that said first party, or his assigns may have upon the acquirement of stock in said corporations by the first party for acts done by said corporations, or by said Frank F. Pulver, prior to the acquirement of the stock in said corporations by said first party, as hereinbefore stated, by reason of the said Frank F. Pulver being a director, stockholder, officer or employe of said corporations, or any of them.

In Witness Whereof, the parties hereto at the City of Rochester, State of New York, have hereunto set their hands and seals this 19th day of December, 1913, said corpora-
1096 tions by their duly authorized officers who act under the direction, consent and authority of the Board of Directors thereof, who have duly authorized them as such officers so to act and bind said corporations, have caused these presents to be signed by their officers and their corporate seals to be hereunto affixed.

_____(Seal)

THE CONTINENTAL VENDING COMPANY,

By_____

B. G. ADAMS CO.,

By_____

COMPTON GUM CO.,

By_____

DI-GESTO COMPANY,

By_____

_____(Seal)

In the Presence Of:

_____

_____

1097

## EXHIBIT 13.

IN THE UNITED STATES DISTRICT COURT.

Southern District of New York.

Wm. Wrigley, Jr. Company, a corporation of the State of West Virginia,
*Complainant,*
*vs.*
Di-Gesto Company and Frank F. Pulver,
*Defendants.*

### FINAL DECREE.

This cause came on to be heard on the motion of complainant by James R. Offield, solicitor for complainant, to enter a decree herein and it appearing to the Court that the complainant filed the Bill of Complaint on the 19th day of December, 1910; that the defendants were duly served with process; that the defendants caused their appearance to be entered in this suit and that the parties have consented to the entry of a Final Decree herein; thereupon in consideration of the premises and the Court being fully advised,

It Is Ordered, Adjudged and Decreed

1st. That the defendant has infringed upon and violated the rights of the complainant by imitating and simulating the packages and cartons of the Spearmint Chewing-
1098 gum of the complainant as to size, form and color in collocation with symbols and arrangement of printed matter employed by complainant upon its packages and cartons.

2nd: That the package of complainant, consisting of five sticks of gum individually wrapped with an enclosing wrapped and printed matter thereon and the component parts thereof and the collocation and arrangement shown by "Complainant's Exhibit Complainant's Spearmint Product" and with the word "Spearmint" in prominent type with a rectangular border, are the equitable property, wrapper, carton and label arrangement of the complainant herein in connection with the manufacture and sale of chewing gum.

3rd: That the defendants have infringed upon and violated the rights of the complainant by imitating and simulating complainant's trade-mark consisting of the representation of a spear with the word "Spearmint" thereon displayed prominently by the use of a rectangular border within which is arranged the word "Spearmint" displayed in prominent type.

4th: That the defendants, Di-Gesto Company and Frank F. Pulver, their officers, agents, representatives, servants, attorneys and employes and each of them, be and are hereby perpetually enjoined from imitating and simulating said packages and cartons of chewing-gum of the complainant as
1099 to size, form and color in collocation with symbols and arrangement of printed matter employed by the complainant upon its packages and cartons and from imitating or simulating said packages and cartons of the complainant or the said trade-mark property of the complainant, in any manner calculated to induce the public to believe that the Spearmint Gum, or other chewing-gum or product of the defendant's is complainant's product.

And it appearing to the court that the parties have agreed upon the damages and profits and the defendant had paid the same to the complainant, and that the complainant has waived an accounting herein, this decree is made final, each party to pay its own costs.

_____

*Judge.*

We hereby consent to the entry of the foregoing Decree:

_____

By_____

*Solicitor for Complainant.*

_____

_____

By_____

*Solicitor and Of Counsel for Frank F. Pulver and Di-Gesto Company.*

Approved:

GEORGE F. HIXON.

1100 **EXHIBIT 14.**

No. 56205.

THE UNITED STATES OF AMERICA

To All to Whom These Presents Shall Come:

This Is to Certify that by the records of the United States Patent Office it appears that Continental Vending Company of Rochester, New York, a Corporation Organized under the Laws of the State of New York, did, on the 14th day of May, 1906, duly file in said Office an application for Registration of a certain

Trade-Mark

for

Chewing-Gum

that It duly filed therewith a drawing of the said Trade-Mark a statement relating thereto, and a written declaration, duly verified, copies of which are hereto annexed, and has duly complied with the requirements of the law in such case made and provided, and with the regulations prescribed by the Commissioner of Patents.

And, upon due examination thereof, it appearing that the said applicant is entitled to registration of its said Trade-Mark under the law, the said Trade-Mark has been duly registered to Continental Vending Company and its succes-
1101 sors or assigns, in the United States Patent Office, this 4th day of September, 1906.

This certificate shall remain in force for Twenty Years, unless sooner terminated by law.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this Fourth day of September in the year of our Lord one thousand nine hundred and Six, and of the Independence of the United States the one hundred and Thirty-first.

(Signed) E. B. Moore
*Acting Commissioner of Patents.*

( Patent Office )
( United States )
( of America )

1102 Trade-Mark

No. 56,205. Registered Sept. 4, 1906.

Continental Vending Company.

Chewing Gum

Application Filed May 14, 1906.

Di-Gesto

Proprietor
CONTINENTAL VENDING COMPANY
By (Signed) WM. H. COOLEY,
*Atty.*

Witnesses:
(Signed) LOTTIE WOOD
(Signed) WM. G. STAUDENMAIER.

1103 UNITED STATES PATENT OFFICE.

Continental Vending Company, of Rochester, New York.

Trade-Mark for Chewing-Gum.

No. 56,205. Registered Sept. 4, 1906.

Statement and Declaration.

Application Filed May 14, 1906. Serial No. 19,519.

Statement

To All whom it may concern:

Be it known that the Continental Vending Company, a corporation duly organized under the laws of the State of New York, and located in the City of Rochester, County of Monroe, in said State, and doing business at No. 9 Mill street, in said city of Rochester, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said company since February 1, 1906.

The class of merchandise to which the trade-mark is appropriated is Class 47, Confectionery, and the particular description of goods comprised in said class upon which such trade-mark is used is chewing-gum.

The trade-mark is displayed on the packages containing the goods, both in single parcels and in quantities, by placing thereon a printed label on which the same is shown.

CONTINENTAL VENDING COMPANY,
By FRANK F. PULVER,
*Secretary and Treasurer.*

(L. S.)

Witnesses:
LOTTIE WOOD
WM. G. STAUDENMAIER.

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Declaration.

City of Rochester,
County of Monroe,
State of New York, } ss:

1104 FRANK F. PULVER, being duly sworn deposes and says that he is the secretary and treasurer of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other firm, person, corporation or association, to the best of his knowledge and belief, has the right to use said trade mark, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several States of the United States, and between the United States and foreign nations or Indian tribes, and particularly with Canada; and that the description, drawing and specimens presented truly represent the trade-mark sought to be registered.

FRANK F. PULVER.

Subscribed and sworn to before me May 8th, 1906.

HERBERT LEARY,
*Notary Public.*

(L. S.)

Exhibit 15. 1105 **EXHIBIT 15.**

Di-Gesto Gum Company
Manufacturers of
"Di-Gesto" Chewing Gum
Registered in U. S. Patent Office
90 Mill Street
Rochester, N. Y., Jan. 29, 1913.

Mr. L. P. Larson, Jr.,
29 So. Clinton St.,
Chicago, Ill.
Dear Sir:—

I just received your telegram and herewith enclose you copy of our answer to same. Also enclose you a circular which we are sending to the trade. Read every word of it.

I also call your attention to the fact that every package that Mr. Wrigley has placed upon the market, that we know of, has been similar and subsequent to some other big seller.

The first package we call your attention to is "Yucatan". Then Wrigley put a package on the market called "Vassar". The next package is "California Fruit." Wrigley put on the market a package called "Juicy Fruit". The next package is "Beeman's Pepsin Gum." Wrigley placed on he market a subsequent package called "Wrigley's Pepsin Gum", and the word "Pepsin" appeared in large letters on the package.

The next package is "Kis-Me" gum, "Tolu", flavor.
1106 On this package appeared a girl's-head and the word "Tolu", both of which are small. Wrigley put his "Sweet Sixteen" out, with a girl's-head on, comparatively large, and the word "Tolu",—also in large letters. Peppermint flavored "Chiclets" are pink, and Wrigley's "Nips" are also pink, and a very similar piece of candy-coated gum. The first Spearmint package that Wrigley placed upon the market was foil wrapped and consisted of five slabs of gum, bundled, wrapped in foil and banded together with a long counterband with the words "Wrigley's Spearmint Chewing Gum", "New flavor". This package was done up similar to the "Adams' Pepsin Tutti Frutti" and its box is identical with the "Adams' Pepsin Tutti Frutti' box, except for the printed matter thereon. He changed this foil-wrapped package to the present five individually-wrapped stick package, which consists of five sticks wrapped in pink paper, banded together with a long counterband, printed in red and green, and the spear

appears on both sides of this package, also the flavor, same as on my original package placed on the market in 1891. We do not believe his present package was put on the market until about 1908, although he claims 1906.

It is true that he beat Grove in his case, but Grove stated on the stand that he did not make any Spearmint gum until
1107 1907, and that Wrigley's package was the first package he saw of Spearmint Gum.

It will pay you to come to Rochester to see the writer.

Yours truly,

F. F. PULVER.

1108 EXHIBIT 16.

Di-Gesto Gum Company
Manufacturers of
"Di-Gesto" Chewing Gum
Registered in U. S. Patent Office
90 Mill Street
Rochester, N. Y., Jan. 31, 1913.

Mr. L. P. Larson,
29 So. Clinton St.,
Chicago, Il.
Dear Sir:—

We are in receipt of your telegram and do not see any reason why we should not furnish you with the testimony that has been taken, although I have not consulted with my attorney, and will not see my attorney until tonight, and I am writing this so that I can get it in the mail in time to reach you tomorrow.

Now we have taken testimony in Chicago, New York, Philadelphia and Rochester, and the reading of same would be mighty interesting to you. I met Mr. Weiscopf on the street, who is with the Redington Mfg. Co., and he says the judge gave his decision in your case in the preliminary injunction, as your signature was similar to Wrigley's. Why that is absurd. If it comes to imitation of signature, if you will look at the California Fruit package, you will notice J. Prim-
1109 ley has written his name in script, and Wrigley is there with the pen on Juicy Fruit, even to the flourish under the signature,—the only difference in the two signatures being that different letters are used. Then again in the case of Yucatan, W. J. White uses type, and "Billy" is there with the type on his Vassar package. In the case of "Kis-Me"

Tolu, that package has a small head on it, and the word "Tolu" is small. Then Wrigley comes out with a similar color scheme, and the girl's head is large on it, and so is the word "Tolu". In this instance he uses type, just the same as the "Kis-Me" Gum Co.

Now Mr. Larson, if you can go out and get me an original package that Wrigley ever turned out, I would be more than pleased to see it. I have been connected with the gum business for upwards of twenty years, and every known brand on the market that has been advertised by the original manufacturers, I believe, was simulated by our friend, Mr. Wrigley. That is something that no other manufacturer, that I know of, has ever done.

When you come here, I will furnish you with duplicates but do not fail to come or in some way meet me before you go into court with your case. Some of these package I will give you, and also have copies made of all the testimony providing my attorney will permit it, and I do not see any
1110 reason why he should not,—and send them all to you.

But there are lots of little things that might come up there, wherein I could help you.

With best wishes, I am,

Yours truy,

F. F. PULVER

In pencil: Some lables inclosed.

Exhibit 17.

1111 EXHIBIT 17.

Di-Gesto Gum Company
Manufacturers of
"Di-Gesto" Chewing Gum
Registered in U. S. Patent Office
90 Mill Street
Rochester, N. Y. Aug. 27, 1913.

Mr. L. P. Larsen,
321 N. Sheldon St.,
Chicago, Ill.

Dear Mr. Larsen:—

I am in receipt of your favor of the 25th and note that there has not been any move in your case; and I also want to thank you for your kind offer and if I can in any way assist you I would be pleased to do so.

I have proven the sale of my Di-Gesto and Pulver packages since 1891. That was before the other fellow was in business. I do not think that he will make you any further

trouble, and thoroughly believe that he is satisfied that I have been on earth for a great many years.

Thanking you for past favors and with best wishes to yourself and Mr. Johnson, I am,

Yours very truly,

F. F. PULVER.

1112 Mr. Aldrich: Now, I am going to ask you, Mr. Reed, to read these exhibits, if you will.

The Court: They are contracts, are they?

Mr. Aldrich: Contracts, yes.

The Court: Call my attention to them on the argument.

Mr. Aldrich: Well, I will do that, and that may be true also of the letters?

The Court: Yes, let them all be considered as read in evidence and read what portions you want to on the argument.

Mr. Aldrich: Yes, thank you. I wont need to have them marked, then.

The Court: No, they are all parts of the deposition, marked in the deposition.

Mr. Aldrich: Yes, they are all marked in the deposition. As this was only identified in Mr. Pulver's deposition, I offer the record formally in evidence, if the Court please, as Defendant's Exhibit 1.

Mr. Offield: Objected to as irrelevant and immaterial.

Said document, Exhibit 1, is in words and figures as follows:

1113 United States of America, }
Western District of New York. } ss.

I, Sidney W. Petrie, Clerk of the District Court of the United States for the Western District of New York, do hereby certify that I have compared the annexed copy of Final Record with the Original entered and on file in this office, and that the same is a correct transcript therefrom, and of the whole of said Original.

I further certify that I am the officer in whose custody it is required by law to be.

In Testimony Whereof, I have caused the seal of the said Court to be affixed at the City of Buffalo, in said District, this 30th day of March, A. D., 1914.

S. W. PETRIE

(United States District Court) *Clerk.*
(Western District of New York)
(Seal)

Defendant's Exhibit 1.

1114 UNITED STATES DISTRICT COURT

Western District of New York

Wm. Wrigley, Jr. Company, a corporation organized and existing under and by virtue of the laws of the State of West Virginia,
*Complainant.*
*vs.*
The Continental Vending Company, a corporation organized and existing under the laws of the State of New York, and Frank F. Pulver, a citizen of the State of New York, residing in the City of Rochester,
*Defendants.*

In Equity
Unfair Competition

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Bill of Complaint.

## BILL OF COMPLAINT.

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To the Honorable, the Judges of the District Court of the United States, in and for the Western District of New York, in Chancery Sitting:

Wm. Wrigley, Jr. Company, a corporation organized and existing under and by virtue of the laws of the State of West Virginia and a citizen of said State within the meaning of the statute, complainant, brings this its Bill of Complaint against The Continental Vending Company, a corporation organized and existing under and by virtue of
1115 the laws of the State of New York and a citizen of the State of New York, and doing business and having its principal office and place of business in the City of Rochester, County of Monroe in said State and Western District of New York; and Frank F. Pulver, a resident of the City of Rochester, State of New York, and doing business in the City of Rochester and Western District of New York, and a citizen of said State.

Thereupon your orator complains and says:

I.

That prior to the year 1894 Wm. Wrigley, Jr., and Wm. Scatchard were copartners in business, engaged in the manufacture, production, marketing and sale of a wide variety of chewing gum products of every kind, name, nature and description known to the business industry, and in vending the same in large quantities throughout all the United States and territories thereof and in adjacent foreign countries, and had an establishment of great size and capacity in the City of Chicago and State of Illinois, and had a business of great extent in the chewing gum industry throughout the United States; that said copartnership and business under the name of Wm. Wrigley, Jr. & Co. was continued from the year 1892 until the year 1904 as a copartnership, and that during said year 1904 the copartnership was dissolved, whereupon your orator was duly incorporated and became
a body corporate, by virtue of the laws of the State
1116 of Illinois, under the name of Wm. Wrigley, Jr. & Co.,
and succeeded to the business, good-will, trade-marks, trade-names and other assets of said copartnership, the same all and singular, having been by your orator's said predecessor to it fully conveyed, transferred and assigned.

That on or about January 1st, 1911 your orator, Wm. Wrigley, Jr., Company, a corporation of the State of West Virginia, acquired by purchase the business, good-will, trade-marks, trade-names and other assets of the Illinois corporation, Wm. Wrigley Jr. & Co., the same all and singular having been fully conveyed, transferred and assigned by the said Wm. Wrigley, Jr. & Co. to the said corporation, Wm. Wrigley Jr. Company, the complainant herein.

II.

And your orator says that the business of your orator and of your orator's predecessors now consists and has always consisted of the manufacture, production and sale of chewing gum products, including a product known as "Spearmint" gum, and all trade-marks, tradenames, and good-will relating thereto.

III.

Your orator says that on or about the year 1894 your orator's predecessor in business, namely, the said copart-

nership Wm. Wrigley, Jr. & Co., adopted and used as a
1117 distinguishing name and to denote origin and identify their said product the name "Spearmint," which name was not at that time in use in connection with chewing gum products and which never had been used, as your orator is informed and believes, in connection with said products.

And your orator says that from the time of the adoption and appropriation of said name "Spearmint" to distinguish and identify the product of your orator's predecessors, the said trade-name "Spearmint" has been used continuously to the present day by your orator and its predecessors.

IV.

And your orator says that the word "Spearmint" has been used in its business and by its predecessors in connection with the products of its manufacture in many different ways, such as upon labels, boxes, packages, wrappers, upon its letter and bill-heads and otherwise, and the same having been advertised and published as the trade-name of your orator and its predecessors to distinguish said goods from others and to denote origin and identify the same.

V.

Your orator further avers that said corporation defendant, The Continental Vending Company, has its principal office and place of business in the City of Rochester, State of
1118 New York, and within the Western District of New York, and is a resident and citizen of the said Western District of New York; that the individual defendant, Frank F. Pulver is, as your orator is informed and believes, the Treasurer, Secretary and Manager of the said corporation defendant and personally conducts, directs and controls its business affairs; your orator further averring that the corporation defendant, The Continental Vending Company, is engaged in the manufacture and sale of chewing gum products under the tradename or mark "Spearmint," but with how many companies the individual defendant, Frank F. Pulver, is connected, which are engaged in the manufacture and sale of chewing gum and particularly in "Spearmint" chewing gum, your orator is unable to definitely state.

Your orator avers, however, upon information and belief, that the said Frank F. Pulver is identified with several different companies, incorporated and otherwise, the sole pur-

poses and objects of which are to place suprious and fraudulent imitations of your orator's Spearmint gum products upon the market for the express purpose of deceiving the public the palming off and selling the counterfeit products of the defendants, both corporate and individual, as and for the products of your orator; and your orator further avers upon information and belief that the office of The Continental Gum Company at Rochester, New York is located at
1119 90 Mills Street, on the third floor rear of an old building, where neither signs nor marks indicate the place of business of the defendants, and that in this one office chewing gum products are produced by the corporation defendant, or the individual defendant Frank F. Pulver, or both, under the tradename "Di-Gesto Company" manufacturers of "Di-Gesto Spearmint Pepsin Gum" and another gum product marketed under the name of B. G. Adams Co., Rochester, New York, having a label bearing the name of "Adams Pepsin Gum Spearmint," and that the office of the said B. G. Adams Company is in the same building and in the same room as that of the said The Continental Vending Company and the said Di-Gesto Company.

Your orator further avers that the mercantile publication of R. G. Dun states that The Continental Vending Company is also known as the Di-Gesto Company.

Your orator further avers that both the Spearmint gum products, the labels of which bear the name Di-Gesto Company, Rochester, New York, and B. G. Adams Company, Rochester, New York, are marked and dressed for the sole purpose of injuring your orator's business to the advantage of the defendants and to the great damage and detriment of your orator, as hereinafter more fully set forth.

VI.

Your orator further avers that the manufacture and
1120 sale of different kinds and styles of chewing gum products is the only item and branch of industry of your orator and that such chewing gum products are presented and sold largely by your orator to the purchasing retail stores handling such products, in cartons, boxes, jars and packages of different sizes and shapes, varying according to the different styles of chewing gum to be enclosed therein; and that all of the said packages of your orator containing chewing gum products are encased or enclosed by a wrapper formation,

having upon the separate wrappers different types of chewing gum products, the wrapper designations being particular and peculiar as to color, words and unusually attractive as to the visual appearance thereof.

VII.

Your orator shows unto your Honors that about the year 1894 your orator's predecessor, after the expenditure of great thought and study, originated and adopted a chewing gum product having a new, peculiar and distinctive flavor designated by your orator as "Spearmint", the spelling of the word being original as to the characters of the letters and being made the prominent and dominant name or word appearing on the individual package of gum; and your orator further adopted in the year 1904 a trade-mark for application to the wrappers and cartons containing Spearmint gum and by which such wrappers, cartons and contents thereof
1121 should be readily recognized at once by reason of the presence thereon of such trade-name of your orator's and trade-mark; your orator averring that said trade-mark consists of a spear; having upon the body of the spear the word "Spearmint"; your orator further averring that at the time of the adoption of said trade-name and trade-mark, a peculiar and distinguishing color scheme for a wrapper was also adopted, consisting of a body color of white with red and green markings thereon, and that such color scheme has been continuously used, not only as to wrapper appellation, but as to all boxes and cartons used in the production of said product, as well as to all manner and forms of advertisements conducted by your orator; your orator averring that since the year 1894 said trade-mark and color scheme has been used continuously upon this peculiar chewing gum product, and that from the year 1906 up to the present time your orator has expended vast sums of money in advertising its "Spearmint" product and making the same known to the trade and to the purchasing public, laying great emphasis not only upon the spear trade-mark and the general color scheme embodied in the wrapper appellation, but also upon the word "Spearmint" as a trade-name for your orator's product and denoting origin of manufacture, and that the said trade-name, trade-mark and color scheme has been advertised in all of the different
1122 methods and by all of the different means known to the most modern system of advertising, and in so doing has

expended upwards of three millions of dollars therefor, until the purchasing public throughout the United States has become so familiar with your orator's trade-name, trade-mark, color scheme and wrapper appellation, and with the association of the word "Spearmint" to your orator's business, that they look to such name as the sign and symbol of your orator's chewing gum product, and the presence of such name as the predominating feature upon the wrapper containing a chewing gum product, is taken by the purchasing public to mean and to mean only that said wrapper or carton containing chewing gum products is the wrapper or carton and contents and is the property and product of your orator; your orator further averring that for a period of some twelve years there was not a single product upon the market known to the trade as "Spearmint" gum.

Your orator further shows unto Your Honors the trade-name, trade-mark and general color scheme as appearing upon the wrapper of your orator's packages of chewing gum, hereby made an exhibit in this case and identified with this your orator's Bill of Complaint as a part thereof, and marked "Complainant's Exhibit Complainant's Spearmint Product."

VIII.

1123 Your orator furthers shows unto Your Honors that since the year 1906, and continuously since that year, your orator has widely advertised in diversified forms and in all the various usual and also extraordinary forms and conditions, said package with said wrapper appellations as above given, and said trade-name applied thereto, and that more than three millions of dollars have been expended by your orator in thus advertising its said "Spearmint" product to the end, result and effect that the said "Spearmint" product of your orator, its trade-name, trade-mark and general color scheme has become highly appreciated by the purchasing public and a large and immediate demand for the chewing gum product of your orator has been created throughout the United States and territories thereof, and the business of manufacturing and selling the "Spearmint" gum product of your orator as so marked with your orator's trade-name, trade-mark and general color scheme, has become and is a vast source of profit and of great value and advantage to your orator and that the peculiar and distinctive trade-name, trade-mark and general color scheme as applied by your orator to its "Spearmint"

product at once captured the attention and appreciation of the entire purchasing public, and was at once taken up, adopted and recognized by the public as a distinctive, peculiar and attractive trade-name, together with the accompanying trade-dress applied to your orator's product.

1124 IX.

Your orator further shows unto your Honors that since the year 1906 your orator has especially advertised its said packages and "Spearmint" product therein contained under said Trade-name "Spearmint" in and throughout the entire State of New York and the immediate vicinity thereof, as well as throughout the entire United States, and by reason of such advertisements, and by reason of the uniform and exceptional character, purity and lasting taste of the product of your orator, your orator has built up a large and growing trade and business from the sale of such product as aforesaid and your orator has now and has had, a vast and extensive sale and has occupied the market in such peculiar chewing gum product in and throughout the State of New York and adjacent territory thereof, as well as throughout the United States, and your orator's product, Spearmint product, is purchased and consumed in large quantities by all classes and conditions of persons therein residing.

X.

Your orator further avers and shows unto Your Honors that the said defendants began the sale of "Spearmint" Chewing gum subsequent to your orator's extensive advertising campaign, whereby your orator's product has become known
1125 throughout the world and that the principal market for the defendant's "Spearmint" product is in the City of New York and territory adjacent thereto, and that by reason of the simulation of your orator's trade-name, style of lettering, shape of package and general color scheme producing the peculiar visual appearance that was adopted by your orator and not used by anyone else prior to its adoption, that a certain large number of dealers in chewing gum products can be found to purchase the said package of chewing gum from The Continental Vending Company, or the Di-Gesto Company, or the P. G. Adams Company and from Frank F. Pulver and others, for the sole purpose of palming off such inferior prod-

ucts upon the public as the goods of your orator and that these defendants have found as a matter of fact that the public makes no distinction between the spurious gum products of these defendants and the original and high grade product of your orator, as to their visual appearance, and that the packages of the defendants as made by the Di-Gesto Company, The Continental Vending Company and B. G. Adams Company can be palmed off on the public as the goods and packages of your orator and are a trade fraud; your orator further averring that the gum product of these defendants is greatly inferior in quality to the gum product of your orator and that the acts of these defendants are in violation of your orator's trade-name and trade-mark rights and equitable
1126 property, constituting unfair business trade and in order that the Court may better see the similarity between the trade-dress of your orator's gum product and the gum products of the defendants, the labels of the defendant's products are herein attached to the Bill of Complaint and made a part hereof and identified as "Complainant's Exhibit Di-Gesto Co Labels" and "Complainant's Exhibit B. G. Adams Co. Labels".

XI.

Your orator further avers and charges, on information and belief, that the said defendants have heretofore in many ways, directly and indirectly, offered and sold chewing gum product as and for your orator's product, whereby the public have been misled and injured, and profits which of right belong to your orator, diverted to the said defendants, your orator further averring that the value if your orator's said trade-name, trade-mark and trade-dress exceeds in amount more than three millions of dollars, and your orator avers that the amount in dispute as to these defendants as herein set forth, exceeds, exclusive of interest and costs, the sum of, to wit, five hundred thousand dollars.

XII.

Your orator furthers avers and charges, upon information and belief, that the defendants have in many ways
1127 offered and sold their said "Spearmint" product without explanation, knowing and believing that the same would be accepted by the public as being your orator's prod-

uct, favorably known as "Spearmint Gum" to the great loss and injury of your orator actually sustained.

XIII.

Your orator further charges, upon information and belief, that in many ways by use of fraudulent and misleading representations by these defendants and by many dealers handling the product of these defendants, known as "Spearmint" gum, by circulars, advertisements and otherwise, these defendants have endeavored to unduce the belief that the "Spearmint" gum as manufactured by them, is the well known article or product in demand in the market, and manufactured and sold for many years by your orator and its predecessor as aforesaid.

XIV.

Your orator further shows unto Your Honors and avers the fact to be that the acts of the said defendants as herein set forth, are wholly without your orator's consent and in wrongful violation of your orator's rights, as aforesaid, and your orator avers and charges the fact to be that the said acts have been committed by the said defendants fraudulently, wil-
1128 fully and unlawfully and that said defendants exercised great skill in closely copying the name "Spearmint", the wrapper appellations and general markings thereon and the advertisements, boxes and cartons pertaining to your orator's product "Spearmint" as to show by a comparison the spurious and fraudulent imitation of your orator's "Spearmint" product, and all things pertaining thereto, even as to detail in the subject-matter or context of the writing appearing on the cartons and wrappers of your orator.

XV.

Your orator further avers and charges the fact to be that all of the acts of the said defendants as above set forth are contrary to equity and good conscience and constitute a fraudulent invasion and infringement of your orator's rights in the premises and an unlawful invasion and infringement of your orator's trade-name, trade-marks, cartons, wrappers appellations and its general trade-dress and your orator's rights thereunder as above set forth, and also your orator's

equitable rights in any use of such names, marks, packages, cartons, wrappers and trade-dress accompanying the same as herein set forth, existing in equity and good law, which in this Honorable Court will be protected and preserved; your orator averring that the acts of these defendants herein complained of have the effect and result of enabling and promoting
1129 false and fraudulent competition in business and fraudulent and unlawful sale and substitution by unscrupulous persons of the defendant's goods in lieu of your orator's goods with the accompanying trade-name, trade-mark and trade-dress as herein set forth. And your orator prays that it may have relief in the premises to which, in equity and good conscience, it is entitled, as the same shall appear upon the facts to be just and equitable, and that it may have such relief the same as if it were here and now made the subject of a specific prayer.

To the end, therefore, that your orator may obtain relief in the premises in this Honorable Court, where alone it can obtain relief, it humbly prays;

(1) That the said defendants be compelled to answer this bill and each and every allegation herein contained, but not under oath, answer under oath being hereby expressly waived, as fully as if directly interrogated as to each.

(2) That the said defendants may be compelled to render before one of the Masters in Chancery of this Court full, true, perfect and complete account of all profits of every description diverted from your orator or received by said defendants, arising out of the defendant's commitment of the infringing acts above complained of, and to account for and pay over all damages to your orator, suffered by your
1130 orator by reason of such infringing and unlawful acts.

(3) That said defendants, their servants, agents and employees, and all claiming or holding through or under them, be restrained and in the order of time perpetually enjoined from in any manner whatsoever handling, advertising or selling individual sticks, packages or boxes of gum having wrappers on said individual sticks, packages or boxes bearing the word "Spearmint" likely to induce the purchasers to believe that the manufactured product of the defendants is that of said complainant, or likely to mislead purchasers in that respect, or likely to enable dealers to sell the products of the defendants as and for the product of the complainant, or from violating and infringing the rights of your orator in the premises, as in detail hereinbefore set forth. To the end that

equity may be done and the relief herein prayed for, and all other relief that it may be righteous in the premises to administer, may be afforded your orator, may it please your Honors such relief fully to grant and to award against the defendants, The Continental Vending Company and Frank F. Pulver, a writ of subpoena of the United States District Court, Western District of New York, commanding them on a certain day hereinafter to be named, and under a certain penalty, to be and appear in this Honorable Court, then and there to answer all and singular the premises, and to
1131 stand by and perform and abide by such above or other order, direction and decree, as may be made against them.

Your orator ever prays, etc.

WM. WRIGLEY, JR. COMPANY
By WM. WRIGLEY
*President.*

E. G. MANSFIELD, Buffalo, N. Y.
OFFIELD, TOWLE, GRAVES OFFIELD
*Complainant's solicitors.*

JAMES R. OFFIELD
*Of Counsel for Complainant.*

State of Illinois } ss
County of Cook }

WM. WRIGLEY, JR. being first duly sworn, says that he is President of the above named corporation, complainant, and is familiar with its business affairs; that he has read the said bill and knows the contents thereof, and is familiar with the exhibits therein referred to, and with the facts recited in said bill; that as to matters and things stated to be true, the same are true in all respects and particulars, and as to the matters and things therein stated to be true upon in-
1132 formation and belief, that he verily believes the same to be true in all respects and particulars.

WM. WRIGLEY, JR.

Subscribed and sworn to before me this 13" day of April, 1912

SADIE M. RYAN,
*Notary Public*

Notarial Seal.

| | |
|---|---|
| 1133 Exhibits Here Attached But Not Copied. | Complainant's Exhibit Complainant's Spearmint Product. |
| Exhibits Here Attached But Not Copied. | Complainant's Exhibit Di-Gesto Co. Labels |
| Exhibits Here Attached But Not Copied. | Complainant's Exhibit B. G. Adams Co. Labels |

Endorsed; #171 Civ. 2-Eq. A 12 U. S. District Court, Western District of New York—In Equity—Unfair competition—Wm. Wrigley Jr., Company, Complainant—vs—The Continental Vending Company and Frank F. Pulver, Defendants—Bill of Complainant—Filed Apr. 22, 1912, S. W. Petrie, Clerk, E. G. Mansfield, Buffalo, N. Y. Offield, Towle, Graves & Offield Solicitors for Complainant. Monadnock Building, Chicago, Ill.

1134 The President of the United States of America, To The Continental Vending Company, a corporation organized and existing under the laws of the State of New York, and Frank F. Pulver, a citizen of the State of New York, residing in the City of Rochester. Greetings: Subpoena.

Your are hereby commanded that you personally appear before the Judge of the District Court of the United States, for the Western District of New York, at a Court of Equity, on the first Monday in June, 1912, to answer to a Bill of Complaint exhibited against you in said Court by Wm. Wrigley, Jr. Company, a corporation organized and existing under and by virtue of the laws of the State of West Virginia and to do further and receive whatever said Court shall have considered in that behalf, and this you are not to omit under the penalty of two hundred and fifty dollars.

Witness, the Honorable John R. Hazel, Judge of the said Court, and the seal thereof, at the City of Buffalo, in the said Western District of New York, this 22nd day of April in the year of our Lord one thousand nine hundred and twelve.

S. W. PETRIE
*Clerk.*

(Seal of Court)

1135 OFFIELD, TOWLE, GRAVES & OFFIELD,
Monadnock Bldg., Chicago, Ill
*Solicitor for Complainant*

E. G. MANSFIELD
Buffalo, N. Y.

The defendant is to enter his appearance in the suit above mentioned, in the Clerk's office, at Buffalo, on or before the day at which the above Subpoena is returnable, otherwise the bill may be taken pro confesso.

SIDNEY W. PETRIE,
*Clerk.*

Western District of New York
United States of America } ss.

Marshal's return.

I, hereby certify, that on the 24th day of April, 1912, at Rochester, in my District, I personally served the within Writ of Subpoena on the within named defendants The Continental Vending Co. and Frank F. Pulver by showing the same to Frank F. Pulver individually and as Treasurer of said Co., with the seal of the Court thereon, and at the time delivered to and leaving with him, true copies thereof.

WM. R. COMPTON
*U. S. Marshal*
P. M. COMPTON,
*Deputy*

Marshal's Fees;

Service .....$4.00
Mileage .....$ .06

(Endorsed); 2101 Original Eq. A 12 No. 171 Civ. 2 United States District Court Western District of New York In Equity Wm. Wrigley, Jr. Company Vs. The Continental Vending Company and Frank F. Pulver Equity Subpoena Filed Apr. 29, 1912 S. W. Petrie, Clerk.

1136 UNITED STATES DISTRICT COURT, Answer.

Western District of New York.

Wm. Wrigley, Jr. Company, a corporation organized and existing under and by virtue of the laws of the State of West Virginia
*Complainant,*
—*vs*—
The Continental Vending Company, a corporation organized and existing under the laws of the State of New York, and Frank F. Pulver a citizen of the State of New York, residing in the City of Rochester,
*Defendants.*
} In Equity
Unfair Competition

The answer of the Continental Vending Company, a corporation organized and existing under and by virtue of the Laws of the State of New York and Frank F. Pulver, a citizen of the State of New York, residing in the City of Rochester to the bill of complaint herein of Wm. Wrigley, Jr. Company, the Complainant these defendants now and at all times hereinafter saving and reserving unto themselves all manner of benefit that may be had or taken to the many uncertainties and insufficiencies of the complainant's bill of complaint contained for answer thereto or unto so much or such part thereof as they are advised is material and necessary for them to make answer unto answering say as follows;

These defendants have no knowledge save that derived
1137 from the bill of complaint relative to the complainant being a corporation organized and existing under and by virtue of the laws of the State of Virginia and insist that complete proof thereof be made. They have no knowledge relative to said complainant succeeding the Wm. Wrigley Jr. & Co., an alleged corporation organized and existing under and by virtue of the laws of the State of Illinois and succeeding William Wrigley, Jr. and William Scatchard as copartners in business, not as to the time during which said firm have been in business nor as to the said firm having been engaged in the manufacture and selling of chewing gum of every kind, name, nature and description known to that busi-

ness industry as in said bill of complaint alleged, nor as to the complainant succeeding to the business good-will, trademarks, trade-names, and other assets of Wm. Wrigley, Jr. and William Scatchard.

These defendants deny on information and belief that on or about the year One thousand eight hundred and ninety-four (1894) the complainant's predecessor in business adopted and used as distinguishing name to denote and identify their chewing gum and products, the name "Spearmint"

These defendants further deny that the name "Spearmint" was not in use in connection with chewing gum products and further

1138 Deny that the said name had never been used in connection with said product prior to the use thereof by Complainant and its predecessors.

These defendants further deny that since the alleged adoption of the word "Spearmint" used in connection with chewing gum that the said name has been continuously and exclusively used to the present date by the complainant and the said William Wrigley, Jr. & Co and its predecessors.

The defendant, Continental Vending Company answering says, that it is a corporation organized and existing under and by virtue of the Laws of the State of New York and having its principal office and place of business in the City of Rochester,

Avers that it is using the assumed business name and designation of Di-Gesto Company and is the successor of Frank F. Pulver and others who have been engaged in the business of manufacture, production, marketing and sale of a variety of chewing gum products of every kind, name, nature and description during and continuously since the year One thousand eight hundred and eighty-nine (1889) and particularly of a variety of chewing gum flavored with the oil of Spearmint and known as "Spearmint."

The defendants further answering say that the Continental Vending Company, is the successor of Frank F. Pulver and others annd that the said Continental Vending Company and Frank F. Pulver have manufactured many styles

1139 brands and flavors of chewing gum since the year 1889 and continuously thereafter up to the present time and are now manufacturing many styles, brands and flavors of chewing gum including the use of the brand, style and flavor of "Spearmint" gum and that it has been the custom of the said company and its predecessors since the year 1889 and

continuously thereafter up to and including the present time to enclose by wrappers sticks of chewing gum, said wrappers being printed and lithographed in different colors and various styles of type and put up in penny and five cent packages paper wrapped and also being put up in penny and five cent packages foil wrapped.

The defendants further answering say that for the last twenty years no change has been made in the wrapping and packing of chewing gum except that within the the last few years a part of the said defendant's and its predecessors product has been wrapped with chewing gum wrapping machines.

The defendants further answering say that it has been the custom of said company and its predecessors and the said Frank F. Pulver to print upon the packages and boxes various names of the different flavors of chewing gum manufactured by them and to place said name flavor and brand upon said package in a prominent manner and

The defendants further answering say that among the
1140 many flavors used in the manufacture of chewing gum,
the Continental Vending Company, Frank F. Pulver and their predecessors have and are using the oil of spearmint obtained from the open market from a species of mint growing in many parts of the United States from which the flavor of "Spearmint" is obtained and have used the same continuously since the year 1889. That Spearmint is a widely distributed genus of fragrant herbs of which there are as many species such as cormint, horsemint, mountainmint, pepermint, watermint, all commonly and generally known as mint.

The defendants further answering say upon information and belief that the word "Spearmint" is a common English descriptive word describing the plant or herb bearing the name "Spearmint."

These defendants further answering say that the word "Spearmint" as applied to chewing gum is descriptive of the particular flavor to which and upon which the word "Spearmint" applies.

These defendants further answering upon information and belief, deny that the said complainant and its predecessors was the first to adopt the word "Spearmint" as applied to chewing gum but on the contrary aver and charge that the word "Spearmint" as a name for chewing gum was used in

this country long before and since the alleged adoption
1141 of the said name by the complainant and its predecessors by the Continental Vending Company, Frank F. Pulver and their predecessors and also by the following named parties at the following named places; Frank E. Fleer & Co and its predecessors, at Philadelphia, Pa and elsewhere; The Peerless Manufacturing Co at Washington, D. C. and elsewhere; the Missouri Gum Co at St Louis, Mo and elsewhere; the Charles W. Huff Co. at Pittsburg, Pa and elsewhere; Robert Johnson, at Elgin, Ill and elsewhere and The Volar Manufacturing Co., at Chicago, Ill and elsewhere.

These defendants further answering upon information and belief deny that the spelling of the word "Spearmint" was original as to the character and choice of word and

These defenndants further deny that the said Wm. Wrigley, Jr & Co in the year One thousand eight hundred and ninety-four (1894) adopted as a trade mark for applicataion to the wrappers, cartons containing "Spearmint" gum the word "Spearmint" but on the contrary aver and charge that the said William Wrigley, Jr & Co. adopted for use as a trade mark a spear similiar to the one shown in said William Wrigley Jr & Co registered trade mark registered August 20, 1907, No. 64,816.

These defendants further answering deny that they are now using or ever have used any packages, wrappers, cartons, or boxes containing chewing gum manufactured
1142 and sold by them, any cuts, pictures, or marks for the purpose of creating in the minds of the public the false impression that their product is the product manufactured and sold by the complainant and its predecessors and for the purpose of deceiving or enabling dealers to deceive and impose upon any person or persons, the careless the uninformed, the ignorant and others by passing off or imposing upon said persons the said product in lieu of that made by the complainant and its predecessors and for the purpose of trespassing upon the good-will of the public toward the complainant and its predecessors and unlawfully secured or appropriated to themselves any trade or patronage which by right belonged to said complainant and its predecessors.

These defendants further deny that the said Continental Vending Company and Frank F. Pulver is identified with several different companies incorporated and otherwise, the sole purpose and object of which is to place spurious and false imitations of complainant's gum products upon the market

and for the express purpose of advertising and palming off their products as and for the products of the complainant and its predecessors. The defendants further answer say that the B. G. Adams Company is a co-partnership consisting of Benjamin G. Adams and Frank F. Pulver of Rochester, New York and using the assumed buiness name of B. G. Adams Co and that the Continental Vending Company is
1143 not connected in any way with the said B. G. Adams Co nor is Frank F. Pulver in any other way connected with the said B. G. Adams Co. except as hereinbefore stated and These defendants further say that the business of the B. G. Adams Co and the Continental Vending Company is kept and is entirely separate from each other.

These defenndants deny that the Spearmint gum product which bear the name Di-Gesto Company, Rochester, N. Y. and B. G. Adams Co. Rochester, N. Y. are marked and dressed for the sole purpose of injuring the complainant's interest to the advantage of these defendants.

These defendants admit that they have placed upon packages containing chewing gum labels such as marked Exhibit "A" and hereto attached and marked "Defendant's Labels" and made a part of this answer.

These defendants further admit that the co-partnership consisting of Benjamin G. Adams and Frank F. Pulver and doing business under the assumed business name of B. G. Adams Co have placed upon packages containing chewing gum, labels such as marked Exhibit "C" and hereto attached and marked "B. G. Adams Co. Labels andn made a part of this answer.

These defendants further admit that they have wrapped separate sticks of chewing gum with wrappers such as Exhibit "B" and hereto attached and marked "Defendant's Wrappers" and made a part of this answer and in that
1144 behalf allege that the said Continental Vending Company, Frank F. Pulver and their predecessors have wrapped separate sticks of chewing gum as above referred to continuously since the year 1889.

These defendants further admit that the B. G. Adams Co. has wrapped separate sticks of chewing gum with wrappers such as marked Exhibit "D" and hereto annexed and marked "B. G. Adams Co. Wrappers" and made a part of this answer and in that behalf allege that the B. G. Adams Co. have wrapped separate sticks of chewing gum with wrappers such

as above referred to continuously since the formation of said copartnership.

These defendants admit that they are now placing chewing gum upon the market in boxes and packages having attached thereto labels, and wrappers such as defendant's Exhibits "A" and "B" and in that behalf allege that the Continental Vending Company and Frank F. Pulver and their predecessors have marketed their products in boxes and packages as above set forth since the year 1889.

That annexed hereto and marked defendant's Exhibit "E" are cartons containing defendant's Di-Gesto Spearmint Gum; Di-Gesto Wintergreen Gum; Di-Gesto Peppermint Gum and made a part hereof.

The defendants further deny that they have appropriated in any manner complainant's trade mark as an adver-
1145 tising symbol and deny that they have made colorable imitation of any advertising of complainant and deny that they have in any manner practised imposition upon the public and are trespassers upon the goodwill of complainant in its business of the manufacture of chewing gum and deny that they are guilty of unfair competition in trade to the injury of complainant by the wrongful diversion of complainant's trade and patronage and the loss of pecuniary profits which would otherwise accrue to complainant.

These defendants deny that they have kept and wrongfully appropriated to their own use the word "Spearmint" except as appears in exhibits "A" and "B" and in that behalf alleged that they and their predecessors have used the same identical color scheme and printing on the labels and wrappers and the arrangement of words, etc. continuously since the year 1889.

These defendants further deny that the word "Spearmint" as the trade mark is the property of the complainant and to have been originated by the complainant and its predecessors.

These defendants further deny that they have ever conspired, copied or took in connection with the word "Spearmint" wrappers of their chewing gum substantially like the wrappers of the complainant and in that behalf allege that the wrappers as used by the defendants and their prede-
1146 cessors is substantially the same identical wrappers, and labels which were originated by the defendants and their predecessors in the year 1889 and have been used continuously by them since that date.

These defendants further deny that they have made use

of in any connection with the word "Spearmint" of a certain trade mark, the representation of a spear upon the packages, cartons, boxes and wrappers in use by the said defendants and

Defendants further deny that they have made use of certain boxes, or cartons imitating or substantially like the carton or boxes by the complainant and its predecessors.

These defendants further aver that they have no object in seeking to induce the public to purchase their goods under the belief that they are purchasing the goods manufactured by the complainant and its predecessors and aver that they are now conducting and at all time have been conducting their business in such manner that the goods manufactured and sold and dealt in by them can be readily distinguished in the market as the product of these defendants.

These defendants further answering say that since the year 1889 the Continental Vending Company and its predecessor Frank F. Pulver and others have been engaged
1147 in the manufacturing and selling of chewing gum products of a great variety of kinds and that the said Continental Vending Company have continuously together with their predecessors been engaged and are now engaged in the business hereinbefore described.

(1) The Continental Vending Company is a corporation organized and existing under and by virtue of the laws of the State of New York and having its principal office and place of business in the City of Rochester, N. Y.

(2) That for a number of years past the said Continental Vending Company has been and is now using the trade-mark "Di-Gesto" in connection with its products and has been doing business under the assumed business name Di-Gesto Company.

(3) That since the year 1889 the Continental Vending Company and Frank F. Pulver and their predecessors have been using the style of package wrapper, printing and carton as shown in Exhibits "A" and "B".

(4) That in the year 1889 the defendant Frank F. Pulver originated and adopted the style of package and wrapper, printing and carton substantially like the style of package wrapper, printing and carton as shown in Defendant's Exhibits "A" and "B" and that practically the same style of package, wrapper, printing and carton have been used by the defendants, Frank F. Pulver and their predecessors
1148 continuously since that time.

The defendants further deny that they have in any

wise infringed upon the rights of the complainant as alleged in said the bill of complaint and deny that it has anywise infringed upon the alleged trademark in the complainant's bill referred to.

Defendants further deny that complainant is entitled to any relief whatsoever or any part of the relief in said bill of complaint demanded and alleged that complainant has no standing in this court or in any court of Equity.

And the defendants pray in all things the same benefit and advantage of this its answer as if it had pleaded or demurred to said bill of complainant and

Defendants deny all and all manner of unlawful acts whatsoever whereof it has in anywise by the said bill of complaint charged all of which matters and things this defendants are ready and willing to prove as this Honorable Court shall direct and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

CONTINENTAL VENDING CO.
By FRANK F. PULVER
*Sec. & Treas.*
FRANK F. PULVER

GEORGE F. HIXSON
*Solicitor and Counsel for Defendants.*

1149 EXHIBIT "A."

Defendant's Di-Gesto Peppermint Label. Defendant's Di-Gesto Wintergreen Label. Defendant's Di-Gesto Spearmint Label.

EXHIBIT "B."

Defendant's Wrapper Defendant's Wrapper, Defendant's Wrapper.

1150 EXHIBIT "C."

B. G. Adams Co. Label, B. G. Adams Co. Labels B. G. Adams Co. Labels.

EXHIBIT "D."

B. G. Adams Co. Wrapper B. G. Adams Co. Wrapper B. G. Adams Co. Wrapper.

1151 State of New York
County of Monroe } ss.
City of Rochester.

FRANK F. PULVER being duly sworn, deposes and says; that he is the secretary and treasurer of the Continental Vending Company, that said Continental Vending Company is a corporation having its principal office and place of business in the City of Rochester, N. Y. and organized and existing by virtue of the laws of the State of New York and a citizen of the State of New York. That the Continental Vending Company is using the assumed business name Di-Gesto Company. That he has read the foregoing answer and knows the contents thereof, that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief and as to those matters he believes it to be true.

FRANK F. PULVER

Sworn to before me this 28th day of June, 1912

FREDERICK W. COIT
*Notary Public*

(Notarial Seal)

My commission expires March 30, 1914.

1152 UNITED STATES DISTRICT COURT

Western District of New York.

State of New York
County of Monroe, } ss
City of Rochester.

FRANK F. PULVER being duly sworn, deposes and says; that he is one of the defendants above named, that he has read the foregoing answer and knows the contents thereof, that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief and as to those matters he believes it to be true.

FRANK F. PULVER

Sworn to before me this 28th day of June, 1912.

FREDERICK W. COIT
*Notary Public*

(Notarial Seal)

My commission expires March 30, 1914.

(Endorsed): #171 Civ. 2 Eq A 12 United States District Court Western District of New York Wm. Wrigley, Jr. Company a corporation organized and existing under and by virtue of laws of State of West Vir., Complainant,—vs—The Continental Vending company, a corporation organized and existing under the laws of the State of New York and Frank F. Pulver, Defendants. Answer George F. Hixon, Attorney for defendants Office and Post Office Address 903 Wilder Building, Rochester N. Y. Filed June 29, 1912 W. Petrie, Clerk.

Replication.

1153 UNITED STATES DISTRICT COURT

Western District of New York

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|---|---|
| Wm. Wrigley, Jr. Company, *Complainant,* *vs.* The Continental Vending Company, and Frank F. Pulver, *Defendants.* | In Chancery Unfair Competition. |

The replication of Wm. Wrigley, Jr. Company, a corporation, Complainant, to the answer of the Continental Vending Company, a corporation, and Frank F. Pulver, Defendants.

This repliant saving and reserving unto itself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer for replication thereunto, says that it will aver, maintain and prove its said Bill of Complaint to be true, certain and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by this repliant. Without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well

and sufficiently replied unto, confessed or avoided, tra-
1154 versed or denied, is true. All which matters and things this repliant is and will be ready to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays as in and by its said Bill it has already prayed.

OFFIELD, TOWLE, GRAVES & OFFIELD
*Solicitors for Complainant.*

(Endorsed) Civ. 171 Eq A-12 United States District Court, Western District of New York in Equity. Wm. Wrigley, Jr. Company vs The Continental Vending Company and Frank F. Pulver. Replication. Filed Aug. 6 1912 S. W. Petrie, Clerk. Offield, Towle, Graves & Offield, Solicitors for Complainant.

1155 IN THE UNITED STATES DISTRICT COURT Final Decree.

Western District of New York.

Wm. Wrigley, Jr. Company
*Complainant,*
*vs.*
The Continental Vending Co., and F. F. Pulver,
*Defendants.*

FINAL DECREE.

This cause, came on to be heard on the motion of complainant by James R. Offield, solicitor for the complainant, to enter a decree herein, and it appearing to the Court that the complainant filed its Bill of Complaint on the 22nd day of April, 1912; that the defendants were duly served with process; that the defendants caused their appearance to be entered in this suit and that the parties have consented to the entry of a Final Decree herein; thereupon, in consideration of the premises and the Court being fully advised.

It is Ordered, Adjudged and Decreed 1st; That the defendant has infringed upon and violated the rights of the complainant by imitating and simulating the packages and cartons for Spearmint Chewing-gum of complainant as to size, form and color in collocation with symbols and arrangements

of printed matter employed upon its packages and car-
1156 tons by the manufacture and sale of Spearmint Chewing-gum with labels like those identified by "Complainant's Exhibit Di-Gesto Co. Labels" and "Complainant's Exhibit B. G. Adams Co. Labels."

2nd; That the packages of complainant, consisting of five sticks of gum individually wrapped with an enclosing wrapper and printed matter thereon, and the component parts thereof and the collocation and arrangement shown by "Complainant's Exhibit Complainant's Spearmint Product" and with the word "Spearmint" in prominent type with a rectangular border, are the equitable property, wrapping, carton and label arrangement of the complainant herein in connection with the manufacture and sale of chewing gum.

3rd; That the defendants, The Continental Gum Company and Frank F. Pulver, their officers, agents, representatives, servants, and employees and each of them, be and are hereby perpetually enjoined from imitating and simulating said packages and cartons of chewing-gum of the complainant as to size, form and color in collation with symbols and arrangement of printed matter employed by the complainant upon the packages and cartons, and from imitating or simulating said packages and cartons of the complainant, or the said trademark property of the complainant, in any manner calculated to induce the public to believe that the Spearmint Gum, or other chewing-gum or products of the defendants, is complainant's product.

1157 And it appearing to the Court that the parties have agreed upon the damages and profits and the defendant has paid the same to the complainant, and that the complainant has waived an accounting herein, this decree is made final, each party to pay its own costs.

JOHN R. HAZEL
*D. Judge.*

We hereby consent to the entry of the foregoing Decree;

WM. WRIGLEY JR COMPANY
By OFFIELD, TOWLE, GRAVES & OFFIELD
*Solicitors for Complainant.*

CONTINENTAL VENDING CO.
By FRANK F. PULVER
FRANK F. PULVER
GEORGE F. HIXON
*Solicitor and of Counsel for Defts.*

State of New York
County of Monroe } ss
City of Rochester

On the 19 day of December, 1913, before me personally came Frank F. Pulver, to me known, who, being by me duly sworn, deposes and says;

That he is the Treasurer of The Continental Vending Company, a corporation organized under the laws of the
1158 State of New York, the corporation which executed the foregoing instrument; that he knows the seal of said corporation and that the seal affixed to said instrument is such corporate seal; that said seal was affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

GEO. F. HIXON
*Com. of Deeds*

(Notarial Seal)

(Endorsed) Eq A 12 U. S. District Court Western District of New York In Equity Wm. Wrigley, Jr. Company vs The Continental Vending Co., and F. F. Pulver, Final Decree. Filed Dec 24 1913 S. W. Petrie, Clerk. E. G. Mansfield, and Offield, Towle, Graves & Offield Solicitors for Complainant. Monadnock Building Chicago, Ill.

1159 Mr. Aldrich: I am tired, I am going to let Mr. Reed read.

Mr. Reed: These depositions were all taken at Rochester New York, on the 5th day of June, 1914.

The deposition of Peter J. Nagle was then read, and is in words and figures as follows, to-wit:

1160 • • • No. 30,563 • • •

Messrs. Offield, Towle, Graves & Offield,
53 W. Jackson Boulevard,
Chicago.

You will please take notice that the defendant herein will take the testimony of Peter J. Nagel, H. H. Pulver, Frank Thomas, John E. O'Connor, Jacob Alt, S. W. Bennett, Robert L. Moore, William B. McVea, Margarette Pringle, A. D. Faucher, all of whom reside at the City of Rochester and States of New York, together with other witnesses, each and

all of whom reside more than 100 miles from any place at which the District Court of the United States for the Northern District of Illinois, Eastern Division, is appointed to be held by law. Which depositions are for and on the behalf of defendant and will be taken before Anna F. McGrath, Room 513 Wilder Building, in the City of Rochester, New York, a Notary Public in and for the County of Monroe and
State of New York, and who is not of counsel nor inter-
1161 ested in any way in this cause; commencing on Monday,
the 1st day of June, at 10:00 O'clock A. M. and thereafter from day to day as the taking of depositions may be adjourned until the same shall be completed. Such testimony will be taken in accordance with the provisions of sections 863, 864 and 865 of the Revised Statutes of the United States and the Equity Rules of said Court.

Upon the completion of the testimony in Rochester we will take the depositions of Alfred H. Burt and John H. Jones, of Buffalo, New York, before Ferdinand E. Finsterbach, a Notary Public in and for Erie County, State of New York, who is not of counsel nor interested in the said cause, at the office of Hoyt & Spratt, 77 West Eagle Street, in said city. And upon the completion of said testimony we will take the testimony of W. J. White, at the office of Dudley & Gray, at Niagra Falls, Niagra County, New York, before Ronald G. Wright, a Notary Public, not of counsel nor interested in said cause. And upon the completion of the testimony at Buffalo and Niagra Falls we will take the depositions of Harry Hall, Henry Rowley, B. G. Adams, Thomas Adams, John Dunbar Adams, Horatio M. Adams and Louis Hicks, at the office of William P. Maloney, 43 Exchange Place, New York City, County and State of New York, before Francis S. Castyglone, a Notary Public for the City and County of New York, who
is not of counsel nor interested in said cause.

1162 ALDRICH & ALDRICH
REED & ROGERS
*Solicitors for Defendant*

Received a copy of the above and foregoing notice this 19th day of May, 1914.

JAMES R. OFFIELD
*Solicitors for Complainant.*

1163 • • • No. 30,563 • • •

Be it remembered, that on this 5th day of June in the year of our Lord one thousand nine hundred and fourteen, I, Anna R. McGrath, a Notary Public, did call and cause to be and personally appear before me, at my office, at 513 Wilder Building, in the City of Rochester, in the State aforesaid, the following witnesses named in the annexed notice, were each sworn to testify to the truth, the whole truth and nothing but the truth, and were called and examined on behalf of the defendant in a certain civil cause or matter of controversy now pending and undetermined in the District Court of the United States for the Northern District of Illinois, Eastern Division, sitting at Chicago in said District, wherein Wm. Wrigley Jr. Co. a corporation, is complainant, and L. P. Larson Jr. Co. and L. P. Larson Jr. are defendants.

The complainant in said entitled cause was represented at the examination of said witnesses by James R. Offield, Esq. and the defendants by Charles H. Aldrich Esq.

1164 PETER J. NAGEL, being duly sworn, testifies as follows, examined by Mr. Charles H. Aldrich:

Q. 1. What is your name and place of business?
A. Peter J. Nagel, 121 Rugby Avenue, Rochester.
Q. 2. In what business are you engaged and how long have you been in business?
A. Printing and paper box business; about 23 years.
Q. 3. With what company are you now connected?
A. Flower City Specialty Company.
Q. 4. Where is the place of business of that company?
A. 845 Maple Street, Rochester, N. Y.
Q. 5. Do you know Frank Pulver?
A. Yes, sir.
Q. 6. How long have you known him?
A. Oh, about 25 years, I should judge.
Q. 7. Did you ever do any business for Mr. Pulver with reference to the printing of gum wrappers or labels?
A. Yes, sir.
Q. 8. When was the first work done for Mr. Pulver?
A. In the latter part of 1891.

Q. 9. What was the work done for him at that time?

A. Gum wrappers.

Q. 10. State whether or not there were gum labels also?

A. I can't answer that question—I call them gum wrappers that is all I done for him at that time.

1165 Q. 11. By my question, I refer to wrappers as the paper wrapping the individual sticks of gum, and the labels as the band or counter-band around the package of five sticks. Please state whether you printed for Mr. Pulver at that time wrappers and labels within this definition?

A. Yes.

Q. 12. What was the nature of your equipment at that time?

A. I had one small press and a limited amount of type, that was all.

Q. 13. How long had you been in business at the time mentioned?

A. Oh, probably a couple of months.

Q. 14. What labels, referring now to the flavor of the gum, did you print for Mr. Pulver?

Objected to by Mr. Offield on the ground of not calling for the best evidence, as obviously the original labels are the best evidence of such fact.

A. My best recollection is wintergreen, spearmint and peppermint.

Q. 15. State whether or not you printed Wrappers indicating the same flavors you have just mentioned, at that time?

Same objection.

A. My best recollection is that I printed wrappers for the individual sticks, as well as the counterband, for the three different flavors mentioned.

Q. 16. On what colored paper were the counterbands printed?

1166 Same objection.

A. The outside wrapper was printed on white.

Q. 17. On what paper were the inside wrappers printed?

Same objection.

A. My best recollection is pink.

Q. 18. In what color ink was the printing of the counterband?

Same objection.

A. Red and green.

Q. 19. In what colored ink, if you know was the printing of the individual wrappers?

Same objection.

A. Black.

Q. 20. State whether or not you have one of the original labels or counterbands so printed by you in 1891 for Mr. Pulver?

Objected to as irrelevent and immaterial to any issue in this cause.

A. No.

Q. 21. When did you last have a copy of such work done by you.

Same objection as last interposed.

A. You will have to make that question a little clearer for me to understand it.

Q. 22. State whether or not you have heretofore been examined as a witness in any litigation in which the question of the work done for Mr. Pulver was involved?

Same objection.

1167 A. I have.

Q. 23. You may state whether you had, and produced on the occasion of such examination, the specimen of the label and counterband printed in 1891 for Mr. Pulver?

Same objection.

A. I had an outside counterband at that time.

Q. 24. Please state what you did with it at that time?

A. I produced it and it was left on exhibit; I don't know what became of it.

Same objection to the question and answer.

Q. 25. You may state whether or not the occasion of your examination was a suit brought by Wm. Wrigley Jr. Co. vs. F. F. Pulver and others in the United States District Court for the Southern District of New York and also in the United States District, Western Division of New York?

Same objection.

A. Yes.

Q. 26. State whether or not you were a witness and your deposition was taken in that litigation?

Same objection.

A. Yes.

Q. 27. And am I to understand you to testify that the only copy you had of the work done for Mr. Pulver in 1891 was produced and made a part of your deposition in that

1168 litigation—please state if that is correct?

Same objection.

A. Yes.

Q. 28. State, if you knew that counsel represented Mr. Wrigley or the Wrigley Company on that occasion?

Same objection.

A. No.

Q. 29. Mr. Offield here was present, wasn't he?

Same objection.

A. Yes.

Q. 30. State if you understood that he represented the Wm. Wrigley Jr. Company?

Same objection.

A. Yes.

Q. 31. Who was the legal representative, if you know, of Mr. Pulver?

Same objection.

A. I believe Mr. Hixon.

Q. 32. Please state his full name and residence on the record.

Same objection.

A. George Hixon of Rochester.

Q. 33. You have stated that the words printed on the counterband were in red and green. Please indicate what words were in red and what in green?

Same objection.

1169 A. I don't remember.

Mr. Aldrich states that he has examined the record in the two litigations referred to and brought by the Wm. Wrigley Jr. Company in the Southern District of New York, and also at Buffalo and that said depositions taken in Rochester in November, 1912, as he is advised, and at which time this witness was examined, and that the records show that there are no depositions on file in either case. He, therefore asks counsel for Wm. Wrigley Jr. Company whether or not he will produce for use upon the trial of the present case the label referred to by this witness and made a part of the deposition, as the witness has stated.

Counsel for Wm. Wrigley Jr. objects to the very apparent attempt by the foregoing statement of Mr. Aldrich to introduce evidence to support the evidence now being given by this witness, and in so far as what evidence may be produced by the complainant in this case, this is a matter to be determined at a later date and not at the present time. This statement is made without either admitting or deny-

ing the presence or absence of any label or any former deposition of this witness.

Counsel for the defendant asks the counsel for the complainant whether the depositions so taken have been filed in the office of the Clerk of either of the courts mentioned?

1170 By Mr. Offield: If the depositions have been filed they are a matter of record, which counsel for defendant can very easily ascertain.

By Mr. Aldrich: As I have stated, I have ascertained that they have not been filed, unless such filing has taken place since my examination in the last days of April of the present year, and in all courtesy, I would request counsel to state if they have been filed since that time.

By Mr. Offield: I cannot state whether such depositions have been filed, as I did not represent the defendant in the cases referred to.

Q. 34. What other labels besides spearmint labels did you print in 1891 for Mr. Pulver?

Objected to as irrelevant and immaterial, and as not calling for the best evidence.

A. Peppermint and wintergreen.

Q. 35. You may state whether or not you saw any of the packages of gum produced by Mr. Pulver in 1891 and subsequent thereto on sale?

Same objection.

A. Yes.

Q. 36. When was this and where?

Same objection.

A. Mr. Pulver gave me some samples of the different kinds and my best recollection is that some of Mr.
1171 Pulver's gum was sold by boys quite sometime after I printed these gum wrappers.

Q. 37. This included spearmint gum?

Same objection.

A. Yes.

Q. 38. Now Mr. Nagle, please describe the spearmint package as you saw it?

Same objection.

A. My best recollection is that the individual sticks were wrapped in pink paper, and the counterbands around the five individual sticks was white paper printed in red and green.

Q. 39. I show you what purports to be a copy of the package referred to as contained in a paper signed Di-Gesto Company F. F. Pulver, Treasurer, and headed "A Few Facts" and call your attention to the description of the first package described, being the upper left hand package, and ask you whether or not that is a true description of the package to which you have referred?

Same objection.

A. Yes.

Paper offered to be marked "Defendant's Exhibit 1, Nagel's Deposition.

The exhibit is objected to as irrelevant and immaterial; as not the best evidence, and as not proven as to its
1172 authenticity or date of publication.

Q. 40. State whether or not at any subsequent time you printed any other labels for Mr. Pulver or any company with which he has relations, and if so, when?

Objected to as irrelevant and immaterial.

A. In 1901.

Q. 41. What were the labels printed for him in 1901?

Objected to as irrelevant and immaterial and as not calling for the best evidence.

A. Spearmint, Wintergreen and Peppermint.

Q. 42. State whether you have any of the labels so printed in 1901?

A. No, sir.

Q. 43. When last did you have any of such labels?

Objected to as irrelevant and immaterial.

A. I don't remember.

Q. 44. State whether or not you had any of them at the time you were examined in November, 1912, as heretofore testified by you?

Same objection; objection is further made to the statement that this witness was examined in November of 1912, as there is nothing in the way of proof of such fact in this record to warrant such statement.

A. I don't remember.

Q. 45. State, if you know, when you were examined in the suits referred to?

1173 Objected to as irrelevant and immaterial.

A. In 1912.

Q. 46. What month?

A. My best recollection is November.

Q. 47. I call your attention to the paper heretofore identified in this deposition as Defendant's Exhibit 1, Nagel Deposition, and to the description of the package in the upper right hand column, marked, in red ink, Di-Gesto, Spearmint, and then again in red type, below, Pepsin Gum, and ask if that is a true and correct description of the label printed by you for Mr. Pulver in 1901?

Objected to as irrelevant and immaterial, as not calling for the best evidence and as predicating the question upon an exhibit that is neither proven, as to its authenticity or date of publication.

A. Yes.

Q. 48. At the time you did the first printing for Mr. Pulver what did he bring to you?

Objected to as irrelevant and immaterial.

A. My best recollection is three woodcuts, spearmint was one, wintergreen, another and peppermint another.

Q. 49. Did you do printing continuously for Pulver or the Di-Gesto Company?

Objected to as irrelevant and immaterial.

1174 A. No, sir.

Q. 50. What do you know, if anything, of Mr. Pulver doing his own printing in connection with his gum business?

Objected to as irrelevant and immaterial, and as calling for secondary evidence.

A. I sold him a printing press.

Q. 51. What became of the blocks which he brought to you with which you did your first printing, if you know?

Same objection.

A. I turned them back to him.

Q. 53. At what time, with reference to the sale of the printing press?

A. I don't remember.

Direct examination closed.

*Cross-Examination by Mr. Offield.*

XQ. 53. About how many labels all told do you think that you printed for Pulver in 1891?

A. 5,000 or better; I don't remember the exact amount.

XQ. 54. Less than 10,000?

A. My best recollection is that it was less than 10,000.

XQ. 55. And does this number include both the wrappers and the labels or counterbands?

A. Yes.

Cross-examination closed.

By Mr. Offield: The entire deposition is objected to as irrelevant and immaterial to any issue in this cause,
1175 as not proving anything, inasmuch as the evidence is not predicted or any label that has been proven as to its date of publication, and notice is given upon the record that at the proper time a motion will be made to strike out the entire deposition for the reasons above stated.

PETER J. NAGEL.

(Exhibit 1 to Nagel's deposition is the same as Exhibit 6 to F. F. Pulver deposition.)

1176 The deposition of John E. O'Connor was then read, and is in words and figures as follows, to wit:

1177 JOHN E. O'CONNOR, being duly sworn, testifies as follows, examined by Mr. Charles H. Aldrich:

Q. 1. You may state your name, age and residence.

A. I was born in '53 and I reside 39 Martin St., my name is John E. O'Connor.

Q. 2. What is your business?

A. Cigar maker.

Q. 3. How long have you been engaged in that business?

A. I have been a dealer and manufacturer about 33 years.

Q. 4. What were you doing in 1892?

A. In the same business.

Q. 5. State whether or not you had a store at that time?

A. A retail cigar store on Andrew St.

Q. 6. In Rochester?

A. In Rochester.

Q. 7. State whether in connection with that business you also handled gum?

A. I did. I commenced handling gum in that year.

Q. 8. From whom did you purchase gum?

Objected to as irrelevant and immaterial.

A. Mr. Pulver.

Q. 9. F. F. Pulver?

A. F. F. Pulver; not directly from him, a man representing him came along and sold me the gum.

Q. 10. What brand of gum did you purchase?

Objected to as irrelevant and immaterial.

1178 A. Spearmint, wintergreen and some other flavor. It was Pulver's gum.

Q. 11. How was this gum done up?

Same objection.

A. Wrapped with an outside wrapper on five sticks of gum; each individual stick was wrapped and then there was an outside wrapper on the five sticks; the outside wrapper on the individual stick was pink.

Q. 12. And the wrapper around the five sticks was what?

Same objection.

A. The ground was white, as I recollect it, and I think it was red and green.

Q. 13. I call your attention to "Defendant's Exhibit 1, Nagel Deposition" and ask you whether the package which you have described is illustrated thereon, and if so, which one?

Objected to as irrelevant and immaterial, as not calling for the best evidence, and as predicating the question upon an exhibit that is not properly proven.

A. The witness answers it is, and has pointed out the top one on the left.

Q. 14. How long did you continue to sell Pulver gum?

A. I have sold it more or less ever since.

Q. 15. I call your attention to "Defendant's Exhibit #1, Nagel Deposition," and ask you if there is on said exhibit any description of the package manufactured and sold

1179 by Pulver in more recent years, and if so, what one?

Same objection.

A. The upper one on the right.

Q. 16. You may state whether or not on the occasion of your first purchase of Pulver Gum, you received any premium, and if so, what that premium was, and, if you have that premium with you, you may produce it and tell us what it is?

Same objection.

A. Yes; it is a Columbian half dollar of 1892.

Q. 17. Where have you kept the Columbian half dollar?

Same objection.

A. Excepting on two other occasions I have kept it in this bill.

Q. 18. When did you receive the Columbian half dollar which you have produced?

A. At the time of the Chicago Exposition.

Q. 19. Why have you placed a date of such receipt as 1892 instead of 1893?

Same objection.

A. I understood it was 1892. Was it 1892 or 1893 when they held the Chicago Exposition? When I purchased the gum they said after the Chicago Exposition I would be selling a whole lot of gum.

Q. 20. You may state why you have preserved this coin?

A. It was the only one I ever had. I have had them
1180 of the date of '93 and that is the reason I done this up in the bill so I wouldn't get this mixed up.

*Cross-Examination by Mr. Offield.*

By Mr. Offield: The entire deposition of the witness is objected to as being irrelevant and immaterial, and notice is given that at the proper time a motion will be made to strike the same from the record. Cross-examination is conducted subjected to the foregoing objection.

XQ. 21. From whom did you purchase Pulver's chewing gum in 1893?

A. I don't know; I purchased it of a man who came along selling it and he delivered it, and exchanged it from time to time as it became old.

XQ. 22. Have you any idea how many packages or boxes of gum you obtained in your first purchase in 1892?

A. Five boxes.

XQ. 23. And how many packages in a box?

A. Twenty.

XQ. 24. Was the gum in all of these five boxes the same flavor?

A. No.

XQ. 25. How many different flavors were there?

A. Two boxes of Spearmint and Wintergreen and Peppermint, I think.

XQ. 26. Two boxes of Wintergreen and one of Pepermint?

A. I think that is what it was.

XQ. 27. Did this gum have paraffined paper on the individual sticks?

1181 A. Yes; every gum I handled, as I recollect it, had paraffined paper on.

XQ. 28. In what year did you make your next purchase of assorted flavors from Pulver or his representative?

A. I couldn't tell you; the gum I never kept any amount of; I kept the money in a box, as I do today, and when the

gum is gone I take the money out of the box and go and buy more.

XQ. 29. Can you name any other time that you purchased an allottment of chewing gum from F. F. Pulver?

A. Well, I have purchased gum right along ever since; when I first commenced selling gum it went very slow, and the Spearmint especially slow—the Spearmint then was a new flavor in gum.

XQ. 30. Can you name any one to whom you sold any one of these three flavors of chewing gum in the year 1892 or subsequent years?

A. It would be just as impossible for me to name any one that I sold gum to as it would be for me to name any one to whom I sold a cigar in that year.

XQ. 31. Do you remember what you paid per box for this first allottment of five boxes?

A. I don't even recollect that. If I was going to make a guess at it I would say 55 cents.

XQ. 32. Who gave you the Columbian half dollar you have referred to?

A. The same man that I bought the gum of.

1182 XQ. 33. And did you wrap the Columbian half dollar up immediately and put it away?

A. No, sir.

XQ. 34. How long after you received it did you wrap it up?

A. When I received another Columbian half dollar in '93, then I took a bill and wrapped it up so I wouldn't make a mistake and pass it out and get rid of it. I knew one was worth a dollar and the other was worth 50c at the time.

XQ. 35. What was the Columbian half dollar given to you for by this representative?

A. He offered it to me as an inducement to purchase the gum.

XQ. 36. And he gave you the 50 cent piece with the five boxes of gum?

A. I think so. That is a good while ago.

XQ. 37. How long have you been selling Wrigley's Spearmint gum if at all?

A. I haven't been selling it at all.

XQ. 38. What other brands of gum did you sell in 1892?

A. That was the only gum I ever handled and it lasted me a long time.

JOHN E. O'CONNOR.

Deposition closed.

1183 The deposition of Henry H. Pulver was then read, and is in words and figures as follows, to-wit:

1184 HENRY H. PULVER, being duly sworn, testifies as follows, examined by Mr. Charles H. Aldrich:

Q. 1. You may state your name, age and residence?
A. Henry H. Pulver, 53, Adams Basin, N. Y.
Q. 2. What relation, if any, do you bear to one F. F. Pulver?
A. A brother.
Q. 3. Where is Mr. F. F. Pulver at the present time, if you know?
A. The last time I heard from him he was in California.
Q. 4. How long has he been absent from Rochester?
Objected to as irrelevant and immaterial.
A. As near as I can recollect, it was the latter part of January he left Rochester.
Q. 5. Of the present year?
A. Yes.
Q. 6. In what business was your brother engaged prior to his leaving Rochester, and for how long had he been engaged in business?
Same objection.
A. Manufacturing chewing gum; he was engaged in business something like 20 years.
Q. 7. State if you know, when and where he commenced the manufacture of chewing gum?
Same objection.
A. I don't think I can tell exactly when he commenced, but I do know that he was manufacturing in the Fall of '91.
1185 Q. 8. Where was he located at that time?
Same objection.
A. At Albany, N. Y.
Q. 9. State whether or not he was ever at Troy, N. Y.?
Same objection.
A. Went over to Troy in the Spring of '92.
Q. 10. State, if you know, what brands of gum he manufactured at the dates you have named?
Same objection.
A. He made all the different flavors.
Q. 11. Name some?
A. Peppermint, Wintergreen and Spearmint.

Q. 12. Please describe, if you know, on the record, the spearmint package as manufactured and sold by your brother at that date?

Objected to as irrelevant and immaterial and as not calling for the best evidence.

A. At that time he printed his own labels in a very crude manner.

Q. 13. My question is designed to elicit from you, if you know, how the individual sticks were wrapped, whether there was any counterband, and if so, what was its color and how it was printed?

Same objection.

1186 A. Well, his packages were—some of them were wrapped five sticks in a bundle and some of them were wrapped each stick separate; then, five of the separate wrapped sticks were collected and wrapped in one counterband.

Q. 14. State, if you know, what kind of paper was used in wrapping the individual sticks?

Same objection.

A. He always used a cheap pink paper in the individual wrapped sticks.

Q. 15. What colored paper, if you know, was used in the counterbands?

Same objection.

A. The paper was white with printing on it.

Q. 16. The printing was what color?

Same objection.

A. Red and green.

Q. 17. State whether or not the counterband was as wide as the length of the sticks?

Same objection.

A. The first counterband was narrow, but was almost immediately widened out nearly the full length of the package.

Q. 18. Mr. Pulver, I call your attention to an exhibit which has heretofore been identified in this record as "Defendant's Exhibit 1—Nagel Deposition," and I ask you

1187 whether or not the representation of what purports to be Pulver's Spearmint Pepsin Gum, as appearing in the upper left-hand corner of the paper referred to, is a true and correct representation of the package of gum made and sold by your brother?

Objection to as irrelevant and immaterial, as not call-

ing for the best evidence, and for the further reason that the question is predicated upon an exhibit that is neither proven as to its authenticity, its date of publication, or the truth of the statements therein contained.

A. It is.

Q. 19. State whether or not, within your knowledge, your brother, or some company with which he was connected, changed the character of the package which he sold, and if so, in what respect?

A. No, there was no change except a little additional decoration of printers ink. I mean by that the counterband was a little more elaborately printed.

Q. 20. How long did your brother continue at Troy or Albany, and when, if at all, did he come to Rochester?

Objected to as irrelevant and immaterial and as calling for secondary evidence.

A. As near as I can recollect, he came to Rochester in '94.

Q. 21. How long if you know, did he carry on the Pulver business, and when, if at all, did he use some other name?

A. That change of name was made sometime around the latter part of 1901.

1188 Q. 22. I show you "Defendant's Exhibit—Nagel Deposition," and ask you to state whether or not the package in the upper right hand corner, marked Di-Gesto Spearmint Pepsin Gum was manufactured and sold by your brother from the date you have just named down to the time he discontinued business?

Objected to as irrelevant and immaterial; as not calling for the best evidence; and as predicating the question upon an exhibit that has not been properly proven.

A. To the best of my recollection it was.

Q. 23. State whether or not you had any connection with the gum business, or with your brother's business, and if so, what?

Objected to as irrelevant and immaterial.

A. I was in the gum business but never connected as a partner in the manufacture of that package.

Q. 24. State what opportunities you had for knowing what packages your brother was manufacturing and selling?

Objected to as irrelevant and immaterial.

A. We were closely connected as brothers, and a brother's interest in my brother's work to examine different articles that he manufactured and often gave me.

Q. 25. State whether or not you have any of the original

packages of Spearmint gum as sold by your brother from 1891 until 1901?

Objected to as irrelevant and immaterial.

1189 A. Yes.

Q. 26. You may also state whether you have any of the original packages of spearmint gum, as you have described them, as sold from 1901 until the time your brother discontinued business?

Objected to as irrelevant and immaterial.

A. I think I know where there are some of those packages.

Q. 27. I will thank you to get one, Mr. Pulver, and make it an exhibit to your deposition—"Pulver Exhibit #1."

A. You mean the Di-Gesto package?

Q. 28. Yes. You may state, Mr. Pulver, whether or not you were heretofore examined as a witness in a litigation commenced by William Wrigley Jr. Company in New York City, Southern District of New York, and also in the United States Court at Buffalo, N. Y. against your brother, the Di-Gesto Company, and perhaps other defendants?

Objected to as irrelevant and immaterial.

A. I was examined in the session of that Court which was held at Rochester. That was the only examination wherein I testified.

Q. 29. Do you know what was done with the evidence taken in that case?

Objected to as irrelevant and immaterial.

A. I do not.

1190 Q. 30. State whether you know if a settlement was reached in that case?

Objected to as irrelevant and immaterial, and as not calling for the best evidence.

A. On that point I have no knowledge, or manner of proof.

Q. 31. State whether or not your brother went out of business?

Objected to as irrelevant and immaterial.

A. I know that he went out of business.

Q. 32. State, if you know, what became of his machinery and factory, who took possession of it, and where it was sent?

Objected to as irrelevant and immaterial.

A. I have no knowledge as to where the machinery was sent or as to who made the purchase, as I never saw any of the papers in connection with the transaction.

By Mr. Aldrich: Complying with opposing Counsel's sug-

gestion that the best evidence should be sought before resorting to secondary evidence, I request, in behalf of the defendant, that opposing Counsel I produce the agreement of settlement, and the arrangement by which all depositions taken in the case for that date were surrendered to opposing Counsel.

By Mr. Offield: Complainant's Counsel objects to the very apparent attempt upon the part of defendant's
1191 Counsel to testify in this cause, or to inject such conclusions as he may have into this record, in so far as the records of any transactions may exist, without admitting or denying the same, Counsel for complainant leaves the defendant's Counsel to such remedies as he may have for obtaining what he may consider to be necessary evidence to prove his case.

Q. 33. You may state whether or not the gum manufactured by your brother, or with the manufacture of which he was connected, during the years you have mentioned, had a large sale?

Objected to as irrelevant and immaterial, as not calling for the best evidence, as obviously the books of the company or the books of F. F. Pulver are the only evidence to show the facts called for in the question.

A. They appeared to have a small sale until very recently.

Q. 34. State whether or not in recent years the sales were larger, and if so, covering what portion of the country?

Same objection as last interposed.

A. Apparently the sale increased very largely during the last three years, from coast to coast; all over the United States.

Q. 35. You know where the books of F. F. Pulver and the Di-Gesto Company are now?

Objected to as irrelevant and immaterial.

A. I have no knowledge but of course I suppose they
1192 went with the business.

Q. 36. You may state whether or not you do not know with reasonable certainty that they were delivered to the Wm. Wrigley Jr. Company?

Objected to as irrelevant and immaterial, as leading, and as a direct attempt upon the part of Counsel, to inject material into this record not founded upon any facts, and merely the expressing Counsel's own conclusions.

A. I couldn't say that, I really do not know.

Adjourned to 2 P. M.

2 P. M.

Met pursuant to adjournment.

The witness produced packages of the gum referred to as requested, which package was marked "Pulver Exhibit #1".

The exhibit was objected to for reason that it is irrelevant and immaterial and for the further reason that there is no proof as to when the wrappers and labels upon the sticks of gum in this exhibit were made, nor is there any proof that the gum so wrapped as contained in the exhibit was ever sold.

Q. 37. The sample of package which you have introduced and had marked is introduced, as I understand you, as within the description contained in Q. 26 of your examination, namely, as an original package, as sold and manufac-
1193 tured by your brother from 1901 until the time he discontinued business; state if that is correct?

Objected to as irrelevant and immaterial.

A. That is correct to the best of my knowledge and belief.

The entire direct examination of this witness is objected to on the ground that is irrelevant and immaterial to any issue in this cause, and for other reasons stated, as noted in the objections, and notice is given that at the proper time a motion will be made to strike out the entire deposition. The cross examination is conducted subject to the foregoing objection.

*Cross-Examination by Mr. Offield.*

XQ. 38. You are a jeweler by trade, are you not?

A. I learned that trade years ago.

XQ. 39. You are engaged in the jewelry business from the year 1900 until when?

A. From the Fall of 1881 off and on practically up until the present time.

XQ. 40. Your brother F. F. Pulver has also had some experience in the jewelry business, has he not?

A. Yes.

XQ. 41. For how long a period did he work for the J. R. White Co., and when?

A. The spring of 1892 until the Fall of 1893.

XQ. 42. Your brother F. F. Pulver also traveled for a jewelry company known, I believe, as the Silver Metal
1194 Co. in the years 1894-1895, did he not?

A. I think that date is correct.

XQ. 43. About that same period he also traveled for a jewelry firm known as Toothill & McBean, did he not?

A. I think that is the name of the people for whom he traveled.

XQ. 44. And in the year 1897 your brother organized the F. F. Pulver Chemical Co., did he not?

A. I think it was about that time.

XQ. 45. And during the years 1901 and 1902 your brother F. F. Pulver engaged in the manufacture of celluloid novelties under the name of F. F. Pulver Novelty Co., did he not?

A. He had such a company at that time?

XQ. 46. Do you remember the Teddy Bear Spearmint Chewing Gum that F. F. Pulver placed upon the market in the year 1907 with the green counterband and a picture of a teddy bear in white?

A. I remember that he made some gum green and white and I think there was a picture of a Teddy Bear; I don't have any recollection of the gum being called Teddy Bear.

XQ. 47. In Q. 25 you were asked whether or not you had any of the original packages of spearmint gum as sold by your brother from 1891 until 1901 and your answer was "Yes." Please state if your answer is correct?

A. My answer should have been No instead of Yes.

1195 As I understood the question, my answer was no.

Cross-examination closed.

*Redirect Examination by Mr. Aldrich.*

RQ. You have testified on cross examination to various other interests of your brother during the period since 1891. Do you mean by that your brother was not in the gum business during this same period, or had these other interests in addition to his gum business?

Objected to on the ground that it is irrelevant and immaterial, and on the further ground that it is calling for secondary evidence.

A. I mean that he was in the gum business during that period, and that these other businesses were in addition to his gum business.

HENRY H. PULVER.

Examination closed.

1196 Whereupon a recess was taken to 2:00 o'clock P. M. of the same day.

(Endorsed) Filed Jan. 7-1925 John H. R. Jamar Clerk.

1197 And on to-wit: the 10th day of May, A. D. 1917, there was filed in the Clerk's office of said court a certain Testimony, Vol. II, taken before the Judge Anderson, a copy of which is in words and figures following to-wit:

1198 Tuesday, March 13th, 1917. 2:00 P. M.

Court met pursuant to adjournment.

Present, as before.

Mr. Reed: If the Court please, at the time of adjournment I was reading the deposition of Jacob F. Alt. Under the suggestion of the Court I now offer that deposition and all the exhibits referred to therein and identified thereby in evidence.

Which said deposition of Jacob F. Alt was considered read in evidence, and is in words and figures following, to-wit:

1199 JACOB G. ALT, being duly sworn, testified as follows, examined by Mr. Charles H. Aldrich:

Q. 1. Please state your name?
A. Jacob G. Alt.
Q. 2. Where do you reside?
A. 45 South Union St.
Q. 3. What is your business?
A. Cigar Manufacturer.
Q. 4. State whether or not you were ever engaged in the retail cigar business?
A. Most of my life.
Q. 5. Where were you located in 1893?
A. The northeast corner of Front and Main Street.
Q. 6. Rochester?
A. Rochester.
Q. 7. State whether you handled gum?
A. I handled gum at that time.
Q. 8. Whose gum?
Objected to as irrelevant and immaterial.
A. F. F. Pulver.
Q. 9. State what flavors were manufactured by Mr. Pulver at that time that you know?
Same objection.

A. Wintergreen and Peppermint.

Q. 10. State whether or not Spearmint was manufactured at that time?

Objected to as irrelevant and immaterial and also as leading.

A. Yes, I handled the Spearmint at that time.

1200 Q. 11. Will you describe the package of Spearmint gum as you handled it in 1893?

Objected to as irrelevant and immaterial, and as not calling for the best evidence.

A. Small sticks tied together, five into a package, and each separate stick was wrapped in paper, then all five were wrapped up together in another small paper wrapper, showing the ends of the five sticks about a quarter of an inch.

Q. 12. What was the color of the paper used in wrapping the separate or individual sticks of gum?

Same objection.

A. They were pink or rose color.

Q. 13. And what was the color of the paper used in making the counter-band holding together the five sticks?

Same objection.

A. I am not positive as to that but I think it was green and white.

Q. 14. I show you Exhibit 1 of the Nagel Deposition and ask you to examine it and indicate whether any of the packages on such exhibit truly represent the Pulver package in 1893?

Objected to as irrelevant and immaterial, as not calling, for the best evidence, and for the further reason that the question is predicated from an exhibit which has not been properly proven.

A. As near as I can recollect it looks very natural; I
1201 can recollect it all right, it looks as natural as can be.

Q. 15. To which package as shown on the exhibit referred to do you have reference?

Same objection.

A. The one on the top on the left looks natural.

Q. 16. State how long you continued to handle the Pulver product?

Same objection.

A. It is impossible for me to tell how long I have handled it, but I know I have handled it for years.

Q. 17. State whether you mean that you have handled it since 1893 or up to the time you discontinued business?

A. I handled it for a number of years, and I have been out of the retail business several times, so I can't state just how many years I did handle it.

Q. 18. State what knowledge, if any, you have of the fact that during all of the time since 1893 up to the time Mr. Pulver discontinued business, spearmint gum manufactured by Pulver was manufactured and sold in this locality?

Objected to as irrelevant and immaterial and as calling for secondary evidence.

A. No, I couldn't state that.

Q. 19. What years were you in retail business, or about what years?

1202 Objected to as irrelevant and immaterial.

A. From '93 to '97, that is the time I was at the corner of Front and Main St., and from thehe I moved to 72 West Main St., and I sold it there for several years; that is all I can state as for how many years I sold.

Q. 20. I call your attention to Defendant's Exhibit 1, Nagel Deposition, and ask you whether or not you ever sold a package of the Pulver Spearmint Gum as described in the upper right hand corner of the exhibit referred to?

Objected to as irrelevant and immaterial.

A. Yes, I sold that.

*Cross-Examination by Mr. Offield.*

By Mr. Offield: The entire deposition is objected to on the ground that it is irrelevant and immaterial to any issue in this cause, and notice is given that at the proper time a motion will be made to strike the same from the record. Cross examination is conducted subject to the foregoing objection.

XQ. 21. How many boxes of Pulver's gum did you buy in 1893?

A. I never bought any great supply at once.

XQ. 22. Well, how many boxes did you buy in the year 1893?

A. I couldn't estate.

XQ. 23. How many did you buy in the year 1894?

A. I couldn't tell, I didn't keep count.

XQ. 24. Can you give the number of boxes that you

1203 bought in any one year from the year 1893 until the time you quit selling?

A. Probably average a box a week.

XQ. 25. Can you give the number of boxes that you bought in the year 1895?

A. Impossible for me to tell, I kept no track.

XQ. 26. You cannot name a single year, can you which you can positively state you bought a certain number of boxes in?

A. I cannot.

XQ. 27. Can you give an estimate of the number of boxes of Pulver gum you bought between the years 1893 and 1900?

A. No, I couldn't tell you.

XQ. 28. Did you always buy one flavor of Pulver's gum or did you purchase different flavors?

A. Different flavors.

XQ. 29. You have stated that you may have sold at least a box a week; upon what do you base this estimate?

A. On the run of business.

XQ. 30. That is your recollection only?

A. That is all.

XQ. 31. Did you handle any gum during this period besides Pulver's?

A. No, sir, I don't remember any other being on the market.

XQ. 32. When did you first go out of the retail cigar business?

A. About three years ago. Of course I got into it again.

XQ. 33. Can you name any person to whom you ever sold any of Pulver's Chewing gum?

1204 XQ. 34. Was Pulver's wintergreen and peppermint flavors wrapped in the same manner as spearmint flavor?

A. Yes, sir.

XQ. 35. What was the best selling flavor during this period, or from 1893 to 1900?

A. I think the spearmint was; it is hard telling what flavors was.

XQ. 36. From whom did you buy Pulver's chewing gum in 1893?

A. Pulver himself.

XQ. 37. Anyone else?

A. Not at that time.

XQ. 38. You stated, did you not, that you went out of the retail business about three years ago? Were you ever out of the retail business before that time?

A. I was.

XQ. 39. When and for how long?

A. A year and a half I was out of the retail business; about 1886.

XQ. 40. Were you out of the retail business at any time between 1893 and 1900?

A. No, sir.

*Redirect Examination by Mr. Aldrich.*

RQ. 41. Were you out of the retail business at any time between 1900 and 1910 or 1911?

A. No, sir.

RQ. 42. Then if I understand you correctly, Mr. Alt, you have continuously sold the Pulver product from 1893 until you went out of business about three years ago?

A. No, sir.

RQ. 43. During that period of this time from 1893 to 1910 or 1911, when you went out of the retail business, 1217 did you fail to handle the Pulver product?

A. I couldn't tell you.

RQ. 44. Was it for any long period?

Objected to as irrelevant and immaterial, and also as leading.

A. I can't state.

RQ. 45. Was the period when you didn't handle the goods, between 1893 and 1900, or between 1900 and 1910?

Same objection.

A. I can't tell.

RQ. 46. State whether you are able to tell us about how many years you handled the Pulver product and how many years you handled the Di-Gesto product?

Same objection.

A. I only know the main facts, but the side issues I don't remember.

JACOB G. ALT.

Deposition closed.

Exhibit 2.

1205 DFTS. EX. 2.

2—390

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UNITED STATES OF AMERICA

DEPARTMENT OF THE INTERIOR,

United States Patent Office.

To all to whom these presents shall come, Greeting:

This Is to Certify that the annexed is a true copy from the Records of this office of the File Wrapper and Contents in the matter of the

Trade-Mark

Registered by

Wm. Wrigley Jr. Company,

January 19, 1915. Number 102,000,

for

Chewing-Gum.

Filed May 10-1917 T. C. MacMillan, Clerk.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington, this 24th day of June, in the year of our Lord one thousand nine hundred and fifteen and of the Independence of the United States of America the one hundred and thirty-ninth.

J. T. NEWTON,
*Acting Commissioner of Patents.*

(Seal)
•(*Stamp*)
(Red) (Seal)
(Stamp)

•Matter in italics in parentheses, stricken out in original transcript.

1206 2—439.

T. M. Serial No. (Series of 1905). Div.
80,285
1914 114.12
(Ex'r's Book)
Trade-Mark No. 102000
Act of February 20, 1905.

Name Wm. Wrigley Jr. Company,
of Chicago,
County of
State of Illinois
For
Chewing Gum.

Parts of Application Filed

Petition August 3,
Declaration " " , 1914
10c revenue stamp received.
Statement " " 1914
Specimens " " 1914
Drawing " " 1914
Fee Cash $10— Aug. 3 1914
" 1 Cert. Dep 191
Appl. filed complete Aug. 3 , 1914

Examined for Publication J. Carnes Oct 19, 1914
Examined for Registration J. Carnes Dec. 17, 1914
*(*Countersigned*) *(*for Commissioner*)
Notice of Allowance Dec. 21, 1914
By Commissioner.
Registered Jan. 19, 1915
Representative
2
Associate Attorney Attorney James R. Offield,
Monadnock Bldg.
Chicago,
Ill.

T. M. Serial No. 80,285 Date of Filing , 191
Trade-Mark No " " Registration , 191
Published in O. G.
Nov. 3 1914

*Matter in italics in parentheses, stricken out in original transcript.

1207 $10—Received Aug. 3 1914 CK A
Chief Clerk U. S. Patent Office

Serial No. 80,285 Paper No. ck.
Application.

PETITION

To the Commissioner of Patents:

The undersigned presents herewith a drawing and five (5) specimens of a trade-mark and requests that the same, together with the accompanying Statement and Declaration, may be registered in the United States Patent Office, in accordance with the law in such cases made and provided; and hereby appoints James R. Offield, Monadnock Building, Chicago, Illinois, to act as its attorney in preparing and presenting this application; to sign the drawing; to make any necessary amendments; to perform any act which is or may be required or necessary for the same, and to receive the Certificate of Registration.

WM. WRIGLEY JR. COMPANY
By A. G. COX
*Treasurer*

1208 STATEMENT.

To All Whom It May Concern:

Be It Known, That Wm. Wrigley Jr. Company, a corporation organized under the laws of the State of West Virginia, with its principal office at 5 North Wabash Avenue in the City of Chicago, County of Cook and State of Illinois, and doing business in said City, County and State, has adopted and used the trade-mark shown in the accompanying drawing, as a trade-mark for chewing gum, in class 46, Food and Ingredients of Foods.

The trade-mark has been continuously used in the business of said corporation since July 28th, 1914.

The trade mark is applied or affixed to the sticks of chewing gum by placing thereon a label on which the trade mark is shown.

Insert A[1]>

WM. WRIGLEY JR. COMPANY,
By A. G. COX
*Treasurer.*

1209 DECLARATION.

State of Illinois } ss.
County of Cook }

A. G. COX, being duly sworn, deposes and says that he is the Treasurer of the corporation, the applicant named in the foregoing Statement; that he believes the foregoing Statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use said trade-mark either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by said corporation among the several states of the United States and between the United States and foreign countries; that the drawing presented, truly represents the trade-mark sought to be registered and that the specimens show the trade-mark as actually used upon the goods.

A. G. Cox.

Subscribed and Sworn to before me this 31st day of July, 1914.

EDWARD W. ECKERLY
(Seal) *Notary Public.*

1210 2—236

Room 163. St.—F. Paper No....I. R.

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number, date of filing and name of the applicant.

DEPARTMENT OF THE INTERIOR
United States Patent Office
Washington Sept. 18, 1914
Mailed " " "

James R. Offield
Monadnock Building,
Chicago, Ill

Please find below a communication from the Examiner of Trade-Marks and Designs regarding the application of Wm.

Wrigley Jr. Company, for trade-mark, filed Aug. 3, 1914, S. N. 80,285.

THOMAS EWING
*Commissioner of Patents.*

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6—1608

Registration is refused on registered trade-mark to Wm. Wrigley Jr., Co., No. 64,816, Aug. 20, 1907.

If applicant is the owner of this registration, the statement should be amended to set forth this fact, identifying same by date and number, whereupon it will be withdrawn as a reference.

(Representation of a double spear)

H. I. HOUSTON
*Acting Examiner*

St

1211 Mail Room
Sep 23 1914
U. S. Patent Office

Serial No. 80285 Paper No. 2
Amdt—A

IN THE UNITED STATES PATENT OFFICE

In Re: Application No. 80,285
Wm. Wrigley Jr. Company
Filed Aug. 3, 1914.
Trade-mark, picture of
a double spear.

Before the Examiner,
Room No. 163

To The Hon. Commissioner of Patents,
Washington, D. C.

Sir:—

In response to Office Action of September 18, 1914, I hereby amend the above entitled application as follows:

In the Statement, at the end thereof, add the following paragraph: This applicant Wm. Wrigley Jr. Company is the owner of registered trade-mark No. 64,816 dated August 20, 1907 and registered by Wm. Wrigley Jr. Company, a corporation organized under the laws of the State of Illinois, said Wm. Wrigley Jr. Company, an Illinois corporation, having assigned all its right, title and interest in and to registered trade-mark No. 64,816, Dated August 20, 1917, together

with the good will of the business in relation thereto, to the applicant herein.

REMARKS.

The statement has been amended setting forth the ownership of the registered trade-mark upon which registration has herein been refused and it is now thought that this application is in condition for publication.

Respectfully submitted,

JAMES R. OFFIELD.

September 21, 1914.
Chicago, Illinois.

1212 2—237.

Trade-mark division. Paper.....3

Address only "The Commissioner of Patents, Washington, D. C." All communications respecting this application should give the serial number and date of filing.

DEPARTMENT OF THE INTERIOR

United States Patent Office R

Washington Oct. 20, 1914.

Mailed " " "

James R. Offield,
Monadnock Building
Chicago, Illinois.

The application for the Registration of a Trade-Mark filed by Wm. Wrigley Jr. Company, Aug. 3, 1914, Serial No. 80,285, for chewing gum, has been examined and passed for publication, in compliance with section 6 of the act authorizing the Registration of Trade-Marks, approved February 20, 1905.

The mark will be published in the Official Gazette of Nov. 3, 1914.

Any person who believes he would be damaged by the registration of this mark may oppose the same by filing notice of opposition, stating the grounds therefor, in the Patent Office within thirty days after the publication thereof, which said notice of opposition shall be verified by the person filing the

same before one of the officers mentioned in Section 2 of the act of February 20, 1905.
If no notice of opposition is filed within said time the Commissioner may issue a certificate of registration.

Copies of the Trade-Mark portion of the Official Gazette containing the publication of the mark may be obtained as soon as published at five cents each.

Respectfully,
THOMAS EWING
*Commissioner of Patents.*

6-1872

1213 2—186

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Address Only No. 80285
"The Commissioner of Patents,
Washington, D. C."

DEPARTMENT OF THE INTERIOR

United States Patent Office

Washington Dec. 21, 1914

Under the revenue law of October 22, 1914, an internal revenue stamp of the value of 10c must be affixed to the certificate to be issued in this case and such certificate will not be issued until after the stamp has been affixed thereto. Send a stamp of the denomination mentioned, which will be affixed and canceled by the Office upon issuance of the certificate.

Wm. Wrigley Jr., Company
Sir:

Your Application for Registration of Trade-Mark for Chewing Gum, has been examined and allowed.

The Certificate of Registration will be issued and forwarded to you as soon as practicable in due order of business.

Very respectfully,
THOMAS EWING
*Commissioner of Patents.*

James R. Offield,
Monadnock Bldg.,
Chicago, Ill.

1214

Mail Room
Dec
26
1914

U. S. Patent Office

1223-4 Monadnock Building

Chicago, December 23, 1914.

Hon. Commissioner of Patents,
Washington, D. C.

Sir:

In re application of Wm. Wrigley, Jr., Company for trademark, Serial No. 80,285, allowed Dec. 21, 1914, I herewith enclose revenue stamps of the value of ten cents, to be affixed to Certificate of Registration.

Respectfully,

JAMES R. OFFIELD
*Sr.*

JRO/SR
Enc.

(In left-hand margin) 10c Revenue Stamp herewith

1215 UNITED STATES PATENT OFFICE.

Wm. Wrigley Jr. Company, of Chicago, Illinois.

Trade-Mark for Chewing Gum.

102,000. Registered Jan. 19, 1915.

Application filed August 3, 1914. Serial No. 80,285.

STATEMENT.

To all whom it may concern:

Be it known that Wm. Wrigley Jr. Company, a corporation organized under the laws of the State of West Virginia, with its principal office at 5 North Wabash Avenue, in the city of Chicago, County of Cook and State of Illinois, and doing business in said city, county, and State, has adopted and used the trade mark shown in the accompanying drawing as a trade-mark for chewing-gum, in class 46, Foods and ingredients of foods. The trade-mark has been continuously used in the business of said corporation since July 28th, 1914.

The trade-mark is applied or affixed to the sticks of chewing gum by placing thereon a label on which the trade-mark is shown.

This applicant Wm. Wrigley Jr. Company is the owner of registered trade-mark No. 64,816 Dated August 20, 1907 and registered by Wm. Wrigley Jr. Company, a corporation organized under the laws of the State of Illinois, said Wm. Wrigley Jr. Company, an Illinois corporation, having assigned all its right, title and interest in and to registered Trade-Mark No. 64,816, dated August 20, 1907, together with the good will of the business in relation thereto, to the applicant herein.

WM. WRIGLEY JR. COMPANY,
By A. G. COX,
*Treasurer.*

1216 (Mark)

DECLARATION.

State of Illinois County of Cook ss:

A. G. COX, being duly sworn, deposes and says that he is the treasurer of the corporation, and applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by said corporation among the several States of the United States, and between the United States and foreign countries; that the drawing presented, truly represents the trade-mark sought to be registered and that the specimens show the trade-mark as actually used upon the goods.

A. G. Cox.

Subscribed and sworn to before me this 31st day of July, 1914.

(L. S.) EDWARD W. ECKERLY,
*Notary Public.*

Copies of this trade-mark may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C.

1217 CLASSIFICATION,

Trade-Marks,
Class 46, Foods and ingredients of goods.
1914

CONTENTS:

Brief
Application.....papers. o k
1. R Sept. 18, 1914
2. Amd't A—Sept-23-1914
3. N of P October 20 1914

Trade-Mark. Claims Use Since July 28th, 1914.

Merchandise
Chewing gum.

Defendant's Exhibit 3. 1218 DEF. EX. 3.

2—390

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UNITED STATES OF AMERICA

DEPARTMENT OF THE INTERIOR,

United States Patent Office.

To all to whom these presents shall come, Greeting:

This Is To Certify that the annexed is a true copy from the Records of this office of the File Wrapper and Contents in the matter of the

Trade-Mark Registered by

Wm. Wrigley Jr. Company,

January 19, 1915 Number 102,001

for

Chewing-Gum.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington, this 24th day of June, in the year of our Lord One thousand nine hundred and fifteen and of the Independence of the United States of America the One hundred and thirty-ninth.

J. T. NEWTON
*Acting Commissioner of Patents.*

Seal Stamp.

1219 2—439

T. M. Serial No. 80,286. (Series of 1905) 1914 Div. (Ex'r's Book) .114-13

Trade-Mark No. 102001

Act of February 20, 1905.

Name Wm. Wrigley Jr. Company
of Chicago,
County of
State of Illinois
For Chewing Gum

Parts of Application Filed

| | | |
|---|---|---|
| Petition | | Aug 3, 1914 |
| Declaration | | " , 1914 |
| Statement | | " , 1914 |
| Specimens | 10c revenue stamp received. | " , 1914 |
| Drawing | | " , 1914 |
| Fee Cash 1 $10 | | Aug 3, 1914 |
| " Cert Dep. | | , 191 |
| Appl, filed complete | | Aug 3 1914 |

Examined for Publication J. Carnes Oct 17, 1914
Examined for Registration J. Carnes Dec 17, 1914
•(*Countersigned*) •(*For Commissioner*)
Notice of Allowance Dec. 21, 1914
By Commissioner
Registered Jan. 19 1915
Representative
2
Associate Attorney

Attorney James R. Offield
Monadnock Bl'd'g, Chgo, Ill

T. M. Serial No. 80,286 Date of Filing , 191
Trade-Mark No. " " Registration, 191

Published in O. G.
Nov. 3, 1914

•Matter in italics in parentheses, stricken out in original transcript.

1220 $10—Received
August 3, 1914
Chief Clerk
U. S. Patent Office

Serial No. 80,286 Paper No. ok.
Application

PETITION.

To the Commissioner of Patents:

The undersigned presents herewith a drawing and five (5) specimens of a trade-mark and requests that the same, together with the accompanying Statement and Declaration, may be registered in the United States Patent Office, in accordance with the law in such cases made and provided; and hereby appoints James R. Offield, Monadnock Building, Chicago, Illinois, to act as its attorney in preparing and presenting this application; to sign the drawing; to make any necessary amendments; to perform any act which is or may be required or necessary for the same, and to receive the Certificate of Registration.

WM. WRIGLEY JR. COMPANY,
By A. G. COX
*Treasurer.*

1221 STATEMENT.

To All Whom It May Concern:

Be It Known, That Wm. Wrigley Jr. Company, a corporation organized under the laws of the State of West Virginia, with its principal office at 5 North Wabash Avenue in the City of Chicago, County of Cook and State of Illinois and doing business in said City, County and State, has adopted and used the trade-mark shown in the accompanying drawing, as a trade-mark for chewing-gum in class 46, foods and Ingredients of Foods.

Insert A[1]>

The trade-mark has been continuously used in the business of said corporation since July 28th, 1914.

The trade-mark is applied or affixed to the sticks of chewing gum by placing thereon a label on which the trade-mark is shown.

WM. WRIGLEY JR. COMPANY
By A. G. COX
*Treasurer.*

1222 DECLARATION.

State of Illinois } ss:
County of Cook }

A. G. COX being duly sworn, deposes and says that he is Treasurer of the corporation the applicant named in the foregoing Statement; that he believes the foregoing Statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by said corporation among the several states of the United States and between the United States and foreign countries; that the drawing presented truly represents the trade mark sought to be registered and that the specimens show the trade mark as actually used upon the goods.

A. G. Cox

Subscribed and Sworn To Before me this 31st day of July 1914

EDWARD W. ECKERLY
(Seal) *Notary Public.*

1223 2—236

St.—F.

Room 163
Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

Paper No. 1. Let.
All communications respecting this application should give the serial number, date of filing and name of the applicant.

DEPARTMENT OF THE INTERIOR
United States Patent Office
Washington Sept. 18, 1914
Mailed " " "

James R. Offield,
Monadnock Building
Chicago, Illinois.

Please find below a communication from the Examiner of Trade-Marks and Designs regarding the application of Wm.

Wrigley Jr. Company, for trade mark, filed Aug. 3, 1914, S. N. 80,286.

THOMAS EWING
*Commissioner of Patents.*

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The word "Mint" is held to be descriptive of the goods to which applicant applies this mark, and should be disclaimed by amendment or removed from the drawing.

A search of Class 46 fails to show that the mark is anticipated.

H. I. HOUSTON
*Acting Examiner*

"(Doublemint")
St.

1224 Mail Room
Sep 23 1914
U. S. Patent Office

Serial No. 80286 Paper No. 2.
Amdt. A.

IN THE UNITED STATES PATENT OFFICE

In Re: Application No. 80,286
Wm. Wrigley Jr. Company,
Filed Aug. 3, 1914.
Trade-mark "Doublemint"
} Before the Examiner, Room 163.

To the Hon. Commissioner of Patents,
Washington, D. C.

Sir:—

In response to Office Action of September 18th, 1914, I hereby amend the above entitled application as follows:

In the Statement, line 9, after the word "Foods", add the following paragraph: "No claim is made to the word "Mint" except in association with the word "Double".

A[1]

## REMARKS.

It is of course obvious that this applicant cannot have exclusive right to the word "Mint" when used alone, and the same is therefore disclaimed.

We believe the foregoing amendment places this application in condition for publication.

Respectfully submitted,
JAMES R. OFFIELD.

September 21st, 1914.
Chicago, Illinois.

1225 2—237

Trade-Mark Division.

Address only "The Commissioner of Patents, Washington, D. C."

Paper No. 3

All communications respecting this application should give the serial number and date of filing.

DEPARTMENT OF THE INTERIOR

United States Patent Office

Washington October 19, 1914

Mailed " " "

James R. Offield
Monadnock Building
Chicago, Illinois

The application for Registration of a Trade-Mark filed by Wm. Wrigley Jr., Company August 3, 1914, S. N. 80,286, for chewing gum has been examined and passed for publication, in compliance with section 6 of the act authorizing the Registration of Trade-Marks, approved February 20, 1905.

The mark will be published in the official Gazette of November 3, 1914.

Any person who believes he would be damaged by the registration of this mark may oppose the same by filing notice of opposition, stating the grounds therefor, in the Patent Office within thirty days after the publication thereof, which said notice of opposition shall be verified by the person filing the same before one of the officers mentioned in section 2 of the act of February 20, 1905.

If no notice of opposition is filed within said time the Commissioner may issue a certificate of registration.

Copies of the Trade-Mark portion of the Official Gazette containing the publication of the mark may be obtained as soon as published five cents each.

Respectfully,
THOMAS EWING
*Commissioner of Patents.*

1226 EH
2-186

Address Only
"The Commissioner of Patents,
Washington D. C."

DEPARTMENT OF THE INTERIOR

United States Patent Office

Washington

Wm. Wrigley Jr. Company Dec. 21, 1914

Sir:

Your Application for Registration of Trade-Mark for chewing gum, has been examined and allowed.

The Certificate Of Registration will be issued and forwarded to you as soon as practicable in due order of business,

Very respectfully,
THOMAS EWING.
*Commissioner of Patents.*

Under the revenue law of October 22, 1914 and internal revenue stamp of the value of 10c must be affixed to the certificate to be issued in this case, and such certificate will not be issued until after the stamp has been affixed hereto. Send a stamp of the denomination mentioned which will be affixed and canceled by the Office upon issuance of the certificate.

JAMES R. OFFIELD,
Monadnock Bldg
Chicago, Illinois

1227 UNITED STATES PATENT OFFICE

Wm. Wrigley Jr. Company of Chicago, Illinois
Trade-Mark For Chewing-Gum

102,001 Registered Jan. 19, 1915
Application filed August 3, 1914, Serial No 80286

STATEMENT.

To all whom it may concern:

Be it known that Wm Wrigley Jr. Company a corporation

organized under the laws of the State of West Virginia, with its principal office at 5 North Wabash Avenue in the City of Chicago, county of Cook and State of Illinois and doing business in said city, county, and state, has adopted and used the trade-mark shown in the accompanying drawing as a trade-mark for chewing-gum in Class 46 Food and ingredients of food.

No claim is made to the word "Mint." except in association with the word "Double"

The Trade-Mark has been continuously used in the business of said corporation since July 28th 1914.

The Trade-mark is shown.

WM. WRIGLEY JR. COMPANY
By A. G. COX.
*Treasurer.*

Doublemint

DECLARATION.

State of Illinois } ss.
County of Cook }

A. G. COX being duly sworn deposes and says that he is the treasurer of the corporation the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person firm, corporation or association to the best of his knowledge and belief has the right to use said trade-mark either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by said corporation among the several States of the United States and between the United States and foreign countries; that the drawing presented truly represents the trade-mark sought to be registered and that the specimens show the trade-mark as actually used upon the goods.

A. G. Cox

Subscribed and sworn to before me this 31st day of July 1914.

EDWARD W. ECKERLY
(L. S.) *Notary Public.*

Copies of this trade-mark may be obtained for five cents each by addressing the "Commissioner of Patents, Washington D. C.

1228 Mail Room
Dec 26 1914
U. S. Patent Office.

Chicago, December 23, 1914

Hon. Commissioner of Patents
Washington, D. C.

Sir:

In re application of Wm. Wrigley, Jr. Company for trademark, Serial No. 80286 allowed Dec. 21, 1914, I herewith enclose revenue stamps of the value of ten cents, to be affixed to Certificate of Registration.

10c Revenue Stamp herewith

Respectfully,
JAMES R. OFFIELD
SR

JRO/SR.
Enc.

1229 CLASSIFICATION.

Trade-Mark
Class 46 Foods and ingredients of food

1914

CONTENTS:

Brief

Application Papers. o k.
1. Let. Sept. 18, 1914
2. Amd't A. Sept. 23, 1914
3. N. of P. Oct 19, 1914

Claims use Since July 28th, 1914

Trade-Mark.
No claim is made to the word "Mint" except in association with the word "Double"

Merchandise
Chewing Gum

MR. JACOB G. ALT recalled:

(By Mr. Aldrich)

RQ. 47. Mr. Alt, you have stated to us upon reading your testimony as transcribed, prior to signature, that you desired to explain your testimony with reference to the continuity or lack of continuity on your part of the sale of the Pulver product. What is it that you wish to add to your deposition on that subject.

1230 A. I means that I perhaps may have run out at times but always tried to continue the sale of it. That is about as near as I can get to it.

RQ. 48. And was that true during all the period that you were in the retail business?

A. Not the latter part.

RQ. 49. What do you mean by "the latter part"?

A. The latter part of my business.

Deposition closed.

JACOB G. ALT.

By agreement of parties, the further taking of depositions herein is adjourned until tomorrow, June 6, 1914, at 10 o'clock A. M., at the same place.

1230½ Mr. Reed: Now, we will also offer in evidence the deposition of Robert L. Moore, of Rochester, and all exhibits identified by him and referred to in the deposition.

Which said deposition of Robert L. Moore was considered read in evidence, and is in words and figures following, to wit:

1231 June 6, 1914.

Met pursuant to adjournment.

ROBERT L. MOORE, being duly sworn, testifies as follows, examined by Mr. Charles H. Aldrich:

Q. 1. Please state your name, residence and occupation?

A. Robert L. Moore, 20 Audubon St., Rochester, N. Y., Manager of the Rochester office of R. G. Dun & Co., with whom I have been connected for about 34 years.

Q. 2. How many years have you been Manager of the Rochester agency?

A. About five years, and previous to that for about seven-

teen years as Assistant Manager having been associated with the Rochester office the entire 34 years.

Q. 3. Are you acquainted with Frank Pulver?

A. I am.

Q. 4. How long have you been acquainted with him?

A. At least 25 years.

Q. 5. During the period you have known him, in what business has he been engaged?

A. My first knowledge of Mr. Frank F. Pulver he was engaged in the gum business, was also at one time connected with what was known as the F. F. Pulver Co., celluloid specialties, etc.; also operated with his brother and others for a time under the style of the Pulver Chemical Co. As far as my memory carries me, Mr. Pulver has been engaged in the gum business, or interested in, practically the entire
1232 period of my acquaintance with him.

The question and answer are objected to by Mr. Offield as calling for and reciting secondary evidence.

Q. 6. Have you any knowledge concerning the package or style of package used by Pulver in his gum business?

Objected to as irrelevant and immaterial and not calling for the best evidence.

A. I think I would be able to identify them if submitted to me.

Q. 7. I call your attention to "Defendant's Exhibit 1, Nagel Deposition", and ask you whether or not you can identify any package thereon?

The question is objected to as irrelevant and immaterial and as being predicated upon an exhibit that has not been properly proven.

A. I recognize this particular one, indicating the upper right hand corner, as one having been used by Mr. Pulver.

Q. 8. State whether or not you are able to recall the upper left hand package?

Objected to as leading.

A. I am not positive as to that particular wrapper.

Q. 9. State whether or not the records of the R. G. Dun Agency in Rochester show when Mr. Pulver was engaged in the gum business—I refer particularly to earlier dates?

1233 Objected to as irrelevant and immaterial.

A. Our records contain reports on the Pulver Chemical Co., Rochester, N. Y., bearing date of April 26, 1898, which report states that the above was not a stock company, but merely a co-partnership existing between Henry H. Pulver and

Frank F. Pulver. That concern was engaged in the manufacture of gum and gum machines.

No cross examination.

RBT. L. MOORE.

1234 Mr. Reed: I also offer the deposition of Frank Thomas, of Rochester, in evidence.

Which said deposition of Frank Thomas was considered read in evidence, and is in words and figures following, to wit:

1235 FRANK THOMAS, being duly sworn, testifies as follows, examined by Mr. Charles H. Aldrich:

Q. 1. Please state your name and residence?

A. Frank Thomas, 16 Vick Park B., Rochester, N. Y.

Q. 2. How long have you lived in Rochester?

A. 47 years, will be next November.

Q. 3. State whether you are acquainted with F. F. Pulver?

A. I am.

Q. 4. How long have you known him?

A. 23 or 24 years.

Q. 5. In what business was he engaged when you first become acquainted with him?

Objected to as immaterial.

A. He was manufacturing and peddling gum.

Q. 6. Where were you employed at that time?

A. I was clerk for James M. Backus, 15-17 W. Main St., Rochester, N. Y.

Q. 7. State the circumstances under which you first met Mr. Pulver?

Objected to as irrelevant and immaterial.

A. He came into the store, knowing that Backus had handled chewing gum and was handling it, sought a sale for his product just the same as he would any other store where they were handling chewing gum.

Q. 8. What was the particular flavor of gum which he
1236 sought to sell?

Same objection.

A. He had been manufacturing and selling two flavors, peppermint and winter green, but he was making a point this time on what he called his new flavor, he called it spearmint. He was making more of a point on sampling and calling attention to the new flavor and at that time was only packing per-

haps two packages in a box, together with the other brands which made up the full complement of the package.

Q. 9. How are you able to fix the date of this acquaintance with Mr. Pulver?

Objected to as irrelevant and immaterial.

A. There are certain dates fixed in my mind, and this is one of them, because I happened to remember that these circumstances were all previous to the World's Fair Exposition.

Q. 10. What knowledge have you, if any, of the character of package used by Mr. Pulver when he was introducing the Spearming flavor?

Objected to as irrelevant and immaterial and not calling for the best evidence.

A. I have no knowledge of any difference in the package today when it was then, the same general color schemed obtained and the same style of packing obtained then.

Q. 11. My question was designed to elicit from you a
1237 description of the package as it was when first introduced?

Same objection.

A. There were five sticks of gum wrapped individually in pink paper, around which there was a counterband printed in red and green, and the ends projected beyond the ends of the counterband perhaps a quarter of an inch, and at that time of course he was operating in Troy, I think. In the meantime, of course, Spearming was printed across the face of the counterband that was in green, and the body of the counterband was white, and the other lettering was red.

Q. 12. State whether you would be able to recognize a Pulver package of that date if you should see it?

Same objection.

A. I think I would.

Q. 13. I call your attention to "Defendant's Exhibit 1—Nagel Deposition", and ask you whether or not any package on said exhibit described represents the package which you have sought to describe in your testimony?

Objected to as irrelevant and immaterial, as not calling for the best evidence, and that the question is predicated on an exhibit not properly proven.

A. I would say that the one in the upper left hand corner is practically the same thing.

Q. 14. State, if you know, what was done with reference to the sale of the Spearming package as you have described
1238 it at the store where you were employed?

Objected to as irrelevant and immaterial, and not calling for the best evidence.

A. There was an order given for gum to Mr. Pulver, the quality I have just forgotten, but I do remember that there was some resentment offered on the spearmint flavor at that time. Mr. Pulver, however, was quite insistent upon getting the spearming before the people, and, as clerk in the store, he asked me if I wouldn't make it a point to give out samples to the customers and ask them to be kind enough to try it. I did so and in the course of two or three days or so we found that what little spearmint had been packed in the package had either been sold, or at least it had disappeared, and when Mr. Pulver came back in the course of a few days he seemed very well pleased and it was suggested that he bring a box of solid spearmint inasmuch as it appeared at that time as if there was going to be a sale for it, and, more than that, there was in stock a sufficient stock of peppermint and wintergreen to last for the time being. Mr. Pulver continued to work in Rochester for a period I would imagine of about two or three weeks. In the meantime, he had appointed an agent herein in town who was supposed to look after the customers Mr. Pulver had started and solicit any new trade that he might see fit. He was a crippled peddler, his given name was Sidney, his
1239 last name I have forgotten. This man has since died and passed away.

Q. 15. You may state whether or not the firm with which you were connected thereafter continued to sell the spearmint gum?

A. Not only did that firm continue it, but I afterwards became a member of the firm of Caney & Thomas, who succeeded to the business of James M. Backus, they also continued the sale of Frank Pulver's product.

Q. 16. State if you refer to the Spearmint product?

Objected to as irrelevant and immaterial, and also as leading.

A. I do.

Q. 17. State whether or not you made any change in business at a later date, and if so, what business you engaged in and where?

A. The firm of Caney & Thomas had an existence of about a year and a half; I sold out my interest in this firm to a Mr. Cuyendall—this was in the late Spring of 1895. I then bought the old Lathrop cigar store, located at N. 4 State St., Elwood

Bldg., Rochester, N. Y., took possession on the morning of July 15, 1895.

Q. 18. State whether or not you met Frank F. Pulver in that connection, and if so, under what circumstances and with what result?

Objected to as irrelevant and immaterial.

A. The store had been closed for several months and
1240 naturally when people realized it was re-opened for business they began to drop in. Among one of the early callers was Mr. Frank Pulver, who I had almost forgotten, but he well remembered me, and came in to make some general inquiries about business and complimenting me on the general appearance of the store.

By Mr. Aldrich: I would suggest that you confine yourselves to the conversations relating to the gum business, if any.

Mr. Pulver had given me to understand that he had an arrangement with Mr. A. F. Nisbet, who had managed the store for the Lathrop Estate. Mr. Pulver asked me if I had found any quantity of his gum, and I said there's several boxes of spearmint gum here, and he asked me if he could see it, and I should it to him, and he said—I would like very much to have my man come and take that gum away and we will send you a case of spearmint, will also send you a very liberal supply of samples, and will be very glad if you would allow our man to come and make a window display. I said—I would be very glad to accommodate you, which was done.

Q. 19. State whether or not there was in this display and the gum sent you by Mr. Pulver at that time the spearmint package as you have described it?

Objected to as irrelevant and immaterial and not calling for the best evidence.

1241 A. This was a solid spearmint display, the same style package.

Q. 20. State how long, if at all, you continued to handle the Pulver spearmint gum?

Objected to as irrelevant and immaterial.

A. Well, I was in business there, of course, for 15 years, sold chewing gum, not only Pulver's brands but others as well.

Q. 21. State if you mean that you sold the spearmint Pulver brand during the entire time you were in business?

Objected to as irrelevant and immaterial, and also as leading.

A. I couldn't say that was sold continuously.

Q. 22. State whether or not there was any change in the package at a later date, and if so, in what that change consisted?

Objected to as irrelevant and immaterial.

A. There were two or three changes made later on, among them was that little bush-like affair, or tree-like, and some printed matter "Flavor lasts"; those changes I imagine were brought about at the time of the formation of the new company.

Q. 23. To what company do you refer?

A. The Di-Gesto.

Q. 24. I show you "Defendant's Exhibit 1—Nagel Deposition" and ask you whether or not any package describe thereon correctly describes a package subsequently sold by you as the Pulver product?

1242 Objected to as irrelevant and immaterial as not calling for the best evidence, and as being predicated upon an exhibit not properly proven.

A. The upper right hand corner. I may have spoken incorrectly about the wording on the counterband—I remembered that that appeared on this upper right hand package.

Q. 25. State whether or not the store which you owned for 15 years was in a prominent place in the City of Rochester?

A. Considered one of the most prominent.

Q. 26. You have mentioned that you handled other gum; what other gum did you handle?

A. White's Yucatan, California Fruit, Beeman's Pepsin Gum, and later on came Chiclets, and there was in stock there a few boxes of some sort of Spuce Gum, but that died out.

Q. 27. After you retired from business in 1910, you may state whether or not you had any relations to the gum business, and if so, what?

A. After a period of about a year and a half, I took the selling agency on a commission account of the Di-Gesto Spearmint in connection with my cigar line, representing as I did at that time, and continued up until February last, 1914, with Mr. Rodriquez & Co., 118 Peral St., New York City.

Q. 28. Where did you go and what connection did you have with the Pulver jobbers?

1243 Objected to as irrelevant and immaterial.

A. Meaning what towns I visited?

Q. 29. Yes?

A. Pittsburg, Pa., Boston, Mass., Philadelphia, Pa., New

York City, N. Y., Baltimore, Washington, D. C., Richmond, Va., Norfolk, Va., Alexandria, Atlantic City, Newark, N. J.

Q. 30. You may state if you know the approximate amount of the Pulver business during the period that you were connected therewith?

Objected to as irrelevant and immaterial and as calling for secondary evidence.

A. We were shipping approximately 75 cases of 60 boxes each, each box containing 20 packages.

Q. 31. Seventy-five cases during what period?

A. Seventy-five cases per day.

Q. 32. State whether or not these shipments covered a wide territory?

Same objection as last.

A. I don't think we skipped a State in the Union.

Q. 33. State whether or not you have any knowledge as a dealer and salesman of gum with reference to when the Wm. Wrigley Co., the Zeno Co., first attempted to introduce Spearmint gum?

Objected to as irrelevant and immaterial and as not calling for the best evidence.

1244 About 1904.

Q. 34. You may state whether or not it is true that Wm. Wrigley & Co. or its predecessors in business, inaugurated or were the first to introduce the practice of wrapping the five individual sticks of gum in pink paper?

Objected to as irrelevant and immaterial.

A. I know they were not.

Q. 35. You may state, if you know, what gum makers so wrapped the individual sticks of gum prior to the time that the Wm. Wrigley Co. or its predecessors in business did so?

Same objection.

A. The only one I ever knew of was Frank Pulver.

Q. 36. How was White's Yucatan wrapped?

Objected to as leading.

A. It was wrapped individually, but there was counterband about it, there was a little binder, just a little strip of paper, but not what you could call a counterband.

Q. 37. You misapprehended my question, which was limited to the individual sticks, and had no reference to the counterband. Having this distinction in mind, I would again ask you if you know how the White Yucatan was wrapped, and in what color of paper?

Objected to as irrelevant and immaterial.

A. The sticks were wrapped individually in a pink
1245 paper with a very narrow band around the center of the package, and printed thereon was "White's Yucatan".

Q. 38. What, if anything, can you say of your own knowledge, based upon your experience as dealer and seller of gum products, as to whether Wm. Wrigley Jr. Co. and its predecessors in business have been the originators of packages, color schemes, etc., or whether they have been imitators or copiers of the successful packages of other gum manufacturers?

Objected to as irrelevant and immaterial, and as not calling for the best evidence.

A. To the best of my knowledge and belief, every package that Mr. Wrigley ever put before the buying public was subsequent to a similar package or brand that may have shown any success.

Q. 39. State if you mean the successful brand of some other manufacturer?

Same objection.

A. Yes, sir.

Q. 40. You may state whether or not you have any paper which correctly described these imitations on the part of Wm. Wrigley & Co. and his predecessors in business of the products of other gum manufacturers?

Objected to as irrelevant and immaterial, and as not calling for the best evidence.

1246 A. I have two such papers.

Q. 41. You may produce them and make them a part of your deposition, marking the same Thomas Exhibits 1 and 2 respectively.

The exhibits are objected to as irrelevant and immaterial and not properly proven as to their authenticity, dates of publication, or the authenticity of the written or pictorial subject matter thereon.

Q. 42. You may state whether or not you were examined as a witness in the suits brought by Wm. Wrigley Jr. Co. against Frank F. Pulver in the Federal Courts of the Southern District of New York and the western District of New York?

Objected to as irrelevant and immaterial.

A. I was a witness.

Q. 43. You may state whether or not you know what was the result of that litigation?

Objected to as irrelevant and immaterial and not calling for the best evidence.

A. I was informed by Mr. Frank F. Pulver the deal was

closed, all bets were off, and Mr. Wrigley had taken over the property at 90 Mill St., or would soon take it over, that he had reached a settlement with Mr. Pulver, no more gum would be made.

Q. 44. You may state whether or not you know if the Pulver factory was dismantled, and if so, by whom?

1247 Same objection.

A. I was at the factory, 90 Mill St., known as the Digesto Co., on several occasions, watched workmen dismantling said factory, was informed that everything was to be cleared out and had been given to understand shipped to Chicago. I also understood that these same men had been sent here by Mr. Wrigley of Chicago for the purpose of dismantling and clearing out the factory.

*Cross-Examination by Mr. Offield.*

By Mr. Offield:

The entire deposition of the witness is objected to on the ground that the evidence contained is irrelevant and immaterial to any issue in this case, as well as for other reasons stated, and notice is given that at the proper time a motion will be made to strike the same from the record.

XQ. 45. Were you a grocery clerk in the store of Backus & Co.?

A. There was no company to it, it was James M. Backus.

XQ. 46. Well, were you a grocery clerk in that store?

A. Yes, sir.

XQ. 47. Do you recollect what your salary was per week?

A. I started at $9.

XQ. 48. What were you getting when the store closed?

A. I was one of the proprietors eventually.

XQ. 49. Do you know the name of any person to whom you sold any of Pulver's chewing gum while you were at the Backus store?

1248 A. I couldn't recall any individuals.

XQ. 50. Can you recall the name of any individual to whom you sold any of Pulver's chewing gum while you were with Caney & Thomas?

A. No, I wouldn't be able to do that.

XQ. 51. Can you recall the name of any individual to whom you sold any of Pulver's gum between the years 1895 and 1910 when you were the proprietor of your own cigar store?

A. I have no way of identifying any particular customer.

It was a cash proposition and naturally there would be no record as I can see.

XQ. 52. Can you state approximately the number of boxes of gum that were sold by any of the stores that you were connected with in any one year from 1892 to 1900? (meaning Pulver's)

A. It would be hard to determine inasmuch as chewing gum is a sort of side line in a cigar store or even in a grocery store.

XQ. 53. Well, when did Pulver's Spearmint gum first begin to sell in any quantity?

A. In 1892 and 1893.

XQ. 54. How many boxes do you suppose were sold at the Backus store in 1892?

A. Perhaps 50.

XQ. 55. How many in the year 1893?

A. Perhaps 100, it kept growing a little all the time.

XQ. 56. This is merely a guess on your part, you have no records, have you?

A. No, sir.

1249 XQ. 57. Now after you gave up your retail store in 1910, how long before you began traveling for the New York Cigar Company?

A. I went to the Hotel Seneca and had charge of the Cigar Department there, stayed for one year, and then took a position with Rodriguez & Co.

XQ. 58. When did you take that position?

A. I think it was in February or March, 1912.

XQ. 59. And did you immediately take on Pulver's line of chewing gum as you went out on the road for this cigar company?

A. No, sir.

XQ. 60. When did you take of the sale of Pulver's chewing gum in connection with your cigar selling?

A. In January, 1913.

XQ. 61. And how long did you continue to sell Pulver's gum thereafter?

A. Until July, 1913.

XQ. 62. What part of July?

A. Around the middle, it was after the 4th of July.

XQ. 63. You have been largely instrumental, have you not, in getting certain witnesses to testify in this case?

A. I have been doing some work, yes, sir.

XQ. 64. Who has been paying you for that work?

A. L. P. Larson Jr. Co., Chicago.

XQ. 65. What have you been paid per day for your services?

A. I am employed by the month by this concern, sell-
1250 ing their chewing gum, which I have been doing.

XQ. 66. That is, you are employed by the month by L. P. Larson Co., the defendant in this case, to sell his chewing gum?

A. Yes, sir.

XQ. 67. How much do you get per month?

A. $100.

XQ. 68. Any commission besides?

A. No, sir.

XQ. 69. And when did you term of employment begin?

A. The 27th of March, 1914.

*Redirect Examination by Mr. Aldrich.*

RQ. 70. I believe you have said that you testified in the Wrigley-Pulver case?

Objected to as beyond the scope of the cross examination.

A. Yes.

RQ. 71. You may state whether or not you testified to the same facts in that examination as you have testified to in the present examination?

Same objection.

A. In substance the same.

RQ. 72. Your testimony has not been changed or affected in any way by the fact of the employment of Larson Jr. Co., has it?

A. No, sir.

RQ. 73. You met Mr. Larson and myself on the occasion when we were here, on the 26th or 27th of March, did you not?

1251 A. Yes, sir, the 26th.

RQ. 74. We met a number of these witnesses on that occasion, did we not?

A. We did.

RQ. 75. You may state whether or not the employment was offered you with any suggestion that it should influence or color your testimony?

A. It was not.

RQ. 76. State whether you have any knowledge or information where a copy of your testimony takin on the former occa-

sion when you were examined in the Wrigley suit against Pulver can be obtained?

Objected to as beyond the scope of the cross examination.

A. If it is still in evidence, I would imagine that perhaps Mr. Wrigley or his legal advisor might be able to produce it.

RQ. 77. You said "still in evidence", or existence, which do you mean?

A. Existence.

*Recross Examination by Mr. Offield.*

RXQ. 78. Can you recall the date upon which you gave your former evidence in the case against Pulver?

A. I cannot.

RXQ. 79. Can you recall if you were in the employ of the Di-Gesto Co. or F. F. Pulver at the time you gave the former evidence?

A. I was not.

RXQ. 80. Can you recall how long you had been out of the employ of the Di-Gesto Co. or F. F. Pulver when you
1252 gave your former evidence?

A. I wasn't in their employ.

RXQ. 81. Well, were you selling Di-Gesto gum at the time you gave your former evidence?

A. No, sir.

RXQ. 82. Had you started to sell Di-Gesto gum at the time you gave your former evidence?

A. Only on a commission basis, that was all, as a side line.

RXQ. 83. So at the time of the former testimony you were selling Di-Gesto gum on a commission basis, is that right?

A. I hadn't started the sale of it.

RXQ. 84. But you had an agreement to start then?

A. We had no real agreement.

RXQ. 85. There was an understanding, however, of some agreement?

A. The suggestion had come from me that I might possibly side-line it, but we hadn't really settled on any policy.

RXQ. 86. How long after this understanding with Mr. Pulver did you testify in his behalf?

A. The testimony was given long before this proposition come up at all.

RXQ. 87. In order to get matters straight then, as I under-

stand you, you began the selling of Di-Gesto gum on a commission basis after you had testified in the former case?

A. Yes.

1253 RXQ. 88. Were you ever paid anything by Mr. Pulver for your services in connection with that case?

A. Not a penny.

RXQ. 89. And what commission did you get on the sale of Di-Gesto gum, after you had testified in behalf of Mr. Pulver?

A. An allowance of 7% on old business, 10% on new business.

*Redirect Examination by Mr. Aldrich.*

RDQ. 90. You may state whether the percentages you have named are the ordinary and usual percentages in the gum trade?

Objected to as not calling for the best evidence.

A. I have no way of knowing.

Deposition closed.

FRANK THOMAS.

1254 State of New York, }
County of Monroe, } ss.
City of Rochester. }

I, Anna R. McGrath, a Notary Public in and for the County of Monroe, State of New York, and City of Rochester do hereby certify that the above and foregoing depositions were taken before me on the 5th and 6th days of June, A. D. 1914, between the hours of ten o'clock A. M. and four thirty P. M. of said day. The reasons for the taking of the foregoing depositions are, and the fact is, that the witnesses examined before me were material and necessary, as set forth in the Notice for the taking of said deposition, the original of which is hereto attached and made a part hereof. That each and all of said witnesses reside more than one hundred (100) miles from any place at which the District Court of the United States for the Northern District of Illinois, Eastern Division, is appointed to be held by law. That I am not of Counsel, nor interested in any way in this cause.

I further certify that on the 5th and 6th days of June, A. D. 1914, I was attended by Charles H. Aldrich, Esq., Solicitor for the defendants, and by James R. Offield, Esq., Solicitor for the complainant, in the cause set forth in the caption hereof, and

in the Notice hereto attached, and by the witnesses whose depositions are herein set forth, and each of said witnesses
was by me sworn to testify to the truth, the whole truth,
1255 and nothing but the truth in said cause, and the depositions of each and all of said witnesses were by me reduced to writing in the presence of said witness, and after carefully reading the same to the witness, each was subscribed by the witness in my presence. I have retained the said deposition in my presence for the purpose of properly addressing the same with my own hand to the Clerk of the Court in which said cause is depending, and for use in which said depositions were taken.

And I do further certify that I am not of Counsel nor Attorney for either of the parties in the said depositions and caption name, nor in any way interested in the event of the cause named in the said caption.

In Testimony Whereof I have hereunto set my hand and notarial seal this 6th day of June in the year of our Lord, One Thousand Nine Hundred and Fourteen.

ANNA R. MCGRATH.

(Notarial Seal)

1256 Mr. Reed: In order that there may be no mistake, I wish also to offer all the exhibits offered by the H. H. Pulver deposition.

We now offer in evidence the deposition of William J. White, he is connected with the American Chicle Company in an official capacity and was the original William J. White who put the Yucatan Chewing Gum on the market. We offer this deposition and all the exhibits referred to and identified therein.

Which said deposition of William J. White was considered read in evidence, and is in the words and figures following, to wit:

1257 • • • No. 30,563 • • •

Be it remembered, that on this 8th day of June, 1914, in the year of our lord one thousand nine hundred and fourteen, I, Ronald G. Wright, a Notary Public, did call and cause to be and personally appear before me, at my office, at 45 Falls Street, in the City of Niagara Falls, New York, the following witness named in the annexed notice, was sworn to testify to

the truth, the whole truth and nothing but the truth, and was called and examined on behalf of the defendant in a certain civil cause or matter of controversy now depending and undetermined in the District Court of the United States for the Northern District of Illinois, Eastern Division, sitting at Chicago in said District, wherein Wm. Wrigley Jr. Co. a corporation, is complainant, and L. P. Larson Jr. Co. and L. P. Larson Jr., are defendants.

1258 The Complainant in said entitled cause was represented at the examination of said witness by James R. Offield, Esq., and the Defendants by Charles H. Aldrich, Esq.

* * * No. 30,563 * * *

Messrs. Offield, Towle, Graves and Offield,
53 W. Jackson Boulevard,
Chicago.

WILLIAM J. WHITE, being first duly sworn, testified as follows:—

Q. State your name, residence and occupation.

A. W. J. White, residence, Niagara Falls. Occupation, manufacturer of chewing gum.

Q. How long have you been engaged in the manufacture of chewing gum?

A. Since 1876 with the exception of four years.

Q. Where were you located in the first part of the period?

A. Cleveland, Ohio.

1259 Q. What was your firm or corporation name or style?

A. W. J. White, Chewing Gum Manufacturer, up until the '90's, when I took in my son and was then W. J. White & Son.

Q. State whether or not you have disposed of the business you had at Cleveland, and if so when and to what Company?

A. Sold out to the American Chicle Company in 1899.

Q. What relations did you bear to the American Chicle Company?

A. I was president of that Company until January, 1907.

Q. Then the interim during which you were not engaged in the gum business was the period immediately following 1907?

A. Yes.

Q. In what name or style are you now conducting your business?

A. W. J. White Chicle Company.

Q. What, if any well known brands of gum did your Company inaugurate and introduce or did you introduce during the time that you were engaged in business in Cleveland and prior to your sale to the American Chicle Company?

A. White's Red Robbin and White's Yucatan.

Q. When was White's Yucatan first put upon the market?

A. December 1886.

Q. How was it wrapped?

A. Five single sticks wrapped separately in paint paper and sealed with a yellow paper band.

Q. State whether or not the yellow paper band was 1260 as wide as the length of the sticks?

A. It was not.

Q. So that as I understand your answer, the pink wrappers of the individual sticks extended at each and beyond the counterband or yellow wrapper?

A. That is correct.

Q. State whether or not you know who first sold packages of gum of five sticks in a package, the individual sticks wrapped in pink paper and sealed with a narrower counterband than the length of the sticks?

A. I do.

Q. Who first did this?

A. W. J. White.

Q. And at what date did you do this?

A. December 1886.

Q. State whether or not you continued from December 1886 until you sold out to the American Chicle Co. and thereafter while you were President of the American Chicle Company to so wrap the package first introduced in December 1886?

A. I did.

Q. What was the style of the package so continuously wrapped during the period you have named?

A. Five single sticks laid flat-ways; sticks three inches in length; three-quarters of an inch wide and approximately 3/32 of an inch thick, each stick wrapped in pink paper; five sticks layed together flat-ways and sealed together with a yellow band approximately ¾ of an inch wide.

Q. What name was printed on this counterband?

A. White's Yucatan Chewing Gum.

1261 Q. State whether or not there was any printing on the pink labels?

A. There was.

Q. What was printed on the individual pink labels?

A. White's Yucatan Chewing Gum, also the general statement to the effect, manufactured by W. J. White, Cleveland, Ohio, as well as the words, Trade Mark Register.

Q. I show you a paper entitled a little history and signed by Di-Gesto Company, Rochester, New York, F. F. Pulver, Treasurer, and ask you whether or not, the third package on the top on the left hand column of the paper referred to is a correct description of your Yucatan package?

A. It is as near as could be judged from the print.

Q. I will ask you whether or not the Yucatan package met with great favor with the buying public?

A. Yes, very great.

Q. State whether or not William Wrigley Jr. Company or his predecessors in business subsequently got out a package that was strongly imitative of your Yucatan package, and if so, what the Wrigley package was called.

Mr. Offield: Objected to as irrelevant and immaterial; and as calling for a legal conclusion on the part of the witness.

A. I think Wrigley's predecessors put out a package of an imitation of Yucatan, known as Yuca Chewing Gum. I

1262 think that later on William Wrigley had a package put up by the Zeno Manufacturing Co. of Chicago, called Vassar Chewing Gum, wrapped five sticks in pink paper and sealed with a white band approximately ¾ of an inch wide.

Q. State whether or not the paper which has heretofore been shown you and which I now have marked as Exhibit 1, White's deposition, contains a true description of the Vassar package?

Objected to as irrelevant and immaterial, as not calling for the best evidence and as predicating the question upon a paper that has not been properly proven.

A. To the best of my recollection, it does.

Q. To what package do you refer?

A. Third package in the right hand column.

Q. You may state whether or not other gum manufacturers after the success of the Yucatan package wrapped their individual sticks in pink paper and bound together five sticks with a counterband of less width than the length of the sticks?

Objected to as irrelevant and immaterial not calling for the best evidence.

A. Yes, a great many of them.

Q. State whether or not this was done so generally that the five stick package so wrapped became the ordinary
1263 package found in trade or commerce in gum.

Same objection.

A. Yes, it was the most popular package on the market and has been since 1886.

Cross Examination waived:

(Signed) WILLIAM J. WHITE

Taken, subscribed and sworn to before me this 8th day of June, 1914.

(Signed) RONALD G. WRIGHT
(Seal) *Notary Public, Niagara County, N. Y.*

1264 State of New York
County of Niagara,
City of Niagara Falls. } ss.

I, Ronald G. Wright, a Notary Public in and for the County of Niagara, State of New York, and City of Niagara Falls, do hereby certify that the above and foregoing deposition was taken before me on the 8th day of June, A. D. 1914, between the hours of ten o'clock A. M. and twelve o'clock A. M. of said day. The reasons for the taking of the foregoing deposition, and the fact is, that the witness examined before me was material and necessary, as set forth in the notice for the taking of said deposition, and the original of which is hereto attached and made a part hereof. That said witness resides more than one hundred (100) miles from any place at which the District Court of the United States for the Northern District of Illinois, Eastern Division, is appointed to be held by law. That I am not of Counsel, nor interested in any way in this cause.

I further certify that on the 8th day of June, A. D. 1914, I was attended by Charles H. Aldrich, Esq., Solicitor for the defendants, and by James R. Offield, Esq., Solicitor for the complainant, in the cause set forth in the caption hereof, and
in the Notice hereto attached, and by the witness whose
1265 deposition is herein set forth, and said witness was by me sworn to testify to the truth, the whole truth and nothing but the truth in said cause, and the deposition of said witness was reduced to writing in the presence of said witness, and after carefully reading the same to the witness, it was

subscribed by the witness in my presence. I have retained the said deposition in my presence for the purpose of properly addressing the same with my own hand to the Clerk of the Court in which said cause is depending, and for use in which said deposition was taken.

And I do Further Certify that I am not of Counsel nor Attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In Testimony Whereof, I have hereunto set my hand and notarial seal this 8th day of June, in the year of our lord One Thousand Nine Hundred and Fourteen.

(Signed) RONALD G. WRIGHT

(Seal)

Fees paid for deposition by Defendants $10.

RONALD G. WRIGHT
*Notary Public*

1266 • • • No. 30,563 • • •

Messrs. Offield, Towle, Graves & Offield,
53 W. Jackson Boulevard,
Chicago:

You will please take notice that the defendant herein will take the testimony of Peter J. Nagel, H. H. Pulver, Frank Thomas, John E. O'Connor, Jacob Alt, S. W. Bennett, Robert L. Moore, William B. McVea, Magarette Pringle, A. D. Faucher, all of whom reside at the City of Rochester and state of New York, together with other witnesses, each and all of whom reside more than 100 miles from any place at which the District Court of the United States, for the Northern District of Illinois, Eastern Division, is appointed to be held by law. Which depositions are for and on the behalf of defendant and will be taken before Anna R. McGrath, room 513 Wilder Building, in the City of Rochester, New York, a Notary Public, in and for the County of Monroe and State of New York, and who is not of counsel nor interested in any way in this cause; commencing on Monday, the 1st day of June, at 10:00 o'clock A. M. and thereafter from day to day as the taking of the depositions may be adjourned until the same shall be completed. Such testimony will be taken in accordance with the provisions of Section 863, 864 and 865

of the Revised Statutes of the United States and the Equity Rules of said Court.

Upon the completion of the testimony in Rochester we will take the deposition of Alfred H. Burt and John H. Jones of Buffalo, New York, before Ferdinand E. Finsterbach, a Notary Public in and for Erie County, State of New York, who is not of counsel nor interested in the said cause, at the office of Hoyt & Spratt, 77 West Eagle Street, in said
1267 City. And upon the completion of said testimony we will take the testimony of W. J. White, at the office of Dudley & Gray at Niagara Falls, Niagara County, New York, before Ronald G. Wright, a Notary Public, not of counsel nor interested in said cause. And upon the completion of the testimony at Buffalo and Niagara Falls we will take the depositions of Harry Hall, Henry Rowley, B. G. Adams, Thomas Adams, John Dunbar Adams, Horatio M. Adams and Louis Hicks, at the office of William P. Maloney, 43 Exchange Place, New York City, County and State of New York, before Francis S. Castyglove, a Notary Public for the City and County of New York, who is not of counsel in said cause.

ALDRICH & ALDRICH
REED & ROGERS
*Solicitors for Defendant.*

Received a copy of the above and foregoing notice this 19th day of May, 1914.
OFFIELD, TOWLE, GRAVES & OFFIELD
*Solicitors for Complainant.*

1268 Mr. Reed We now offer in evidence the deposition of Henry Rowley, which was taken in New York. He is the President of the American Chicle Company. We offer his deposition in evidence.

Which said deposition of Henry Rowley was considered read in evidence, and is in the words and figures following, towit:

1269 • • • No. 30,563 • • •

It Is Hereby Stipulated between the parties hereto that the deposition of Henry Rowley may be taken at the office of the American Chicle Company in the Metropolitan Tower Building, in New York City, in the State of New York, on Wednesday next, April 28th, at 11:00 o'clock A. M. before F. Stanley

Castyglone, a Notary Public, or any other officer authorized by law to take depositions. Notice, caption, transmission and all formalities are expressly waived, but exceptions for competence and relevancy of evidence will be deemed reserved for the hearing. Said deposition to be taken by the defendant and read on the hearing of said cause.

JAMES R. OFFIELD
*Solicitor for Complainant.*
CHARLES H. ALDRICH
*of Solicitor for Defendant.*

1270 • • • No. 30,563 • • •

Deposition of HENRY ROWLEY, taken pursuant to stipulation hereto annexed on Wednesday, April 28th, 1915, at No. 1 Madison avenue, New York City, New York, before F. Stanley Casytglone, Notary Public.

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Appearances:

James R. Offield, Esq., For the Complainant;

Charles H. Aldrich, Esq., For the Defendants.

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1271 HENRY ROWLEY, a witness called on behalf of the defendants herein, and residing at the Borough of Brooklyn, City of New York and State of New York, more than one hundred miles from the place where this cause is to be tried, being duly cautioned and affirmed to tell the whole truth, and being carefully examined, deposes and says as follows:

*Direct Examination by Mr. Aldrich.*

Q. What relations have you had, Mr. Rowley, to the business of manufacturing gum?

A. I have been engaged in it directly for this last twenty-six years.

Q. State briefly what your relation to that business has been and with what companies you have been and are now connected?

A. I was the secretary and treasurer of Adams and Son's

Company, manufacturers of chewing gum, Brooklyn, New York, from 1890 to 1899 inclusive; secretary and treasurer of the American Chicle Company, which acquired the large number of chewing gum manufacturers, for a period of fourteen and a half years; and since January 20th, 1914, I have been president of the American Chicle Company, manufacturers of chewing gum.

Q. In this relation to the manufacture of chewing gum, you may state whether or not you have been and are familiar with the labels and wrappers of many of the different chewing gums?

A. Yes, I am familiar with the labels and wrappers—all the labels of Adams and Son Company, W. J. White and Sons of Cleveland, the Beeman Chemical Company of Cleveland,
J. P. Primley of Chicago, Kes Me Gum Company of
1272 Louisville. All of those companies were formed or do now form part of the American Chicle Company.

Q. You may state, if you know, which company so far as you are acquainted with the trade in the manufacture of chewing gums in the United States, first wrapped the individual sticks five sticks constituting a package?

A. Each stick you mean wrapped separately and then bound together?

Q. Yes?

A. As near as my knowledge goes, W. J. White and Sons of Cleveland, Ohio, was the first chewing gum manufacturer to wrap each piece separately, each stick separately, and then to combine five of them by means of a yellow band. I can submit copies of it here, if it is any good to you. (Witness produces articles described.) This is what I have known personally.

Q. At what date, as far as you know was this form of wrapping first employed by W. J. White and Sons?

A. The first time that I saw that was in 1899, but it had been going, I know, earlier than that.

Mr. Aldrich: I will ask you to attach and make part of your answer one of these wrappers together with the yellow counterband.

The wrapper and counterband are attached to this deposition and marked "Exhibit 1."

Witness: Originally the inscription on Exhibit 1 read
W. J. White and Sons ,Cleveland. It is now W. J. White
1273 and Sons, American Chicle Company, successor, as the manufacturer.

Q. What, if any, knowledge have you of the first use of a label composed of red, white and green as a part of the wrapper?

A. Red, white and green?

Q. Yes?

A. I don't know of any. I don't recall any.

Q. I call your attention to a wrapper which purports to wrap the packages used in the manufacture of gum by F. J. Pulver of Troy, New York and show the labels, afterwards registered, and ask you whether or not you have any knowledge or information with reference to such labels?

Mr. Offield: Question objected to as leading.

A. You call my attention to all of these labels?

(Indicating paper handed to witness by counsel.)

Q. I do.

A. I do not know much about Pulver's. I have seen it around as the manufacture of Pulver of Rochester a few years ago, say four or five. The other mark, Wrigley's Spearmint Pepsin Gum, I have seen that conspicuously for four or five years, now changed to Wrigley's Perfect Gum.

The paper to which the witness' attention is called is Exhibit 1 attached to the answer filed in this case.

Q. You may state whether or not the W. J. White Yucatan Gum had a general sale throughout the United States?

A. It had a very large sale, sir.

Q. And for a good many years prior to the acquisition of that Company by the American Chicle Company?

A. Yes, as far back as 1889 to my knowledge, but so
1274 far as the records are concerned which have come under my observation, 1887.

Q. What other companies, if any, to your knowledge, wrap the individual sticks of gum in pink wrappers, or rather wrapped the individual sticks of gum in pink wrappers prior to the year 1900?

A. None to my knowledge.

Q. What companies, if any, had a counterband or outside wrapper that was narrower than the wrapping of the individual sticks other than the Yucatan Gum manufactured by White?

A. I only recall one which I think was originally manufactured by the Zeno Manufacturing Company of Chicago. Its name was either Yucca or Vassar or both. I remember the wrapper only disclosing the Yuc at the left hand side of the small band.

Q. I call your attention to a copy or purported copy of the gum to which I take your last answer refers. It is the third from the top in the right hand column of Exhibit 1 attached to the answer of the defendant in the present case, entitled "A Little History" at the top, and ask you if that is the label which you had in mind (handing witness paper)?

A. (Examining paper.) Yes. I had the Vassar in mind, and also Yucca, another one besides this one to which you call my attention.

Q. Will you examine the exhibit to which your attention is called and which you now hold in your hand and state
1275 whether or not you are familiar with the labels therein described and if so how long you have known them or been familiar with them?

A. (Examining paper.) I am familiar with all the exhibit except one which is called Wrigley's Nips. I have not seen that. I have been familiar with the California Fruit Chewing Gum since 1891; with the Beeman's Chewing Gum about the same time; Yucatan since 1889; Kis Me Gum about 1899—I visited their factory; Fleer's Chiclets, I have been interested in their manufacture for eight years; Pulver's Spearmint Gum I have seen around as previously testified. Also the Di-Gesto in a small way. Juicy Fruit I have seen at various times, but I do not recall how long ago.

Q. You may state, Mr. Rowley, in each case if you know which of the two corresponding antedated the other?

A. The California Fruit antedated Juicy Fruit by several years. The one in green marked Wrigley's Pepsin Gum I have never seen. The one which is Wrigley's Vassar, as I have already testified, was originally manufactured by the Zeno Manufacturing Company. It is similar in its dress to that of Yucatan, and Yucatan antedates it many years. I remember the appearance of the Sweet Sixteen some seven or eight years ago, an imitation we always thought of our Kis Me gum as set forth in the opposite column to the Sweet Sixteen, and Kis Me gum had been going many years
1276 before the American Chicle Company purchased it. Wrigley's Nips I have not seen, but Fleer's Chiclets antedated it many years. Wrigley's Spearmint chewing gum, of course, I have seen that advertised for five or six years and whether the Pulver's antedated him I don't know. Wrigley's Spearmint Pepsin Gum is a continuation of the package marked Wrigley's Spearmint Chewing Gum and is the same age, because it is the same make,—differently styled.

Q. You may state whether or not the sheet to which you have reference and concerning which you have been testifying does truly represent the several labels therein referred to?

A. I believe so except the Wrigley's Nips, which is evidently the shape of the article rather than the label and as I haven't seen them I cannot testify regarding it.

*Cross-Examination by Mr. Offield.*

Q. Has the American Chicle Company or any of the companies allied therewith ever brought suit against Wm. Wrigley or the Zeno Manufacturing Company for the infringement of any of its trade names or marks or wrapper simulations?

A. No.

*Redirect Examination by Mr. Aldrich.*

Q. You may state if you will why not?

A. We have been too busy attending to our business to have our time and money taken up in fighting cases of infringement.

Q. So it has not been, if I understand your last answer, because you did not think that there had been a simula-
1277 tion of your labels and wrappers?

Mr. Offield: Objected to as leading.

A. No.

Q. Your course of conduct, as I understand your answers, has not been because you did not think that there had been a simulation of your wrappers and labels?

Mr. Offield: Objected to as leading.

A. We have refrained from bringing action against Mr. Wrigley and a number of other infringers because of the simulation simply because we did not want to be troubled with the legal annoyances and delays and expenses. We always believed that they were infringers and that nothing that Mr. Wrigley put out was original except the name Spearmint.

HENRY ROWLEY.

Affirmed and subscribed before me this 28th day of April, 1915.

F. STANLEY CASTYGLONE,
*Notary Public.*

(F. S. Castyglone,
Notary Public,
Kings County,
N. Y.)

State of New York,
Southern District of New York, } ss.
County of New York.

I hereby certify that on the 28th day of April, 1915, before me F. Stanley Castyglone, a Notary Public in and for the County of Kings, certificate filed in New York County,
1278 and State of New York, at the office of the American Chicle Company, No. 1 Madison Avenue, Metropolitan Tower Building, in the City, County and State of New York, personally appeared, pursuant to the stipulation hereto annexed, at 11:00 o'clock A. M., the witness named in the said stipulation, and James R. Offield, Esq., appeared as counsel for complainant, and Charles H. Aldrich, Esq. appeared as counsel for defendants, and the said Henry Rowley being by me first duly cautioned and affirmed to testify the whole truth, and being carefully examined, deposed and said, as appears by the deposition hereto annexed.

And I further certify that the said deposition was then and there reduced to typewriting by me and was after it had been reduced to typewriting subscribed by the witness, and the same has been retained by me for the purpose of sealing up and directing the same to the Clerk of the Court as required by law.

And I further certify that the reason why the said deposition was taken was that the said witness resides at the Borough of Brooklyn, City of New York, New York, more than one hundred miles from Chicago, Illinois, the place where this cause is to be tried.

And I further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the cause.

1279 And I further certify that the fee for taking said deposition, $13.05, has been paid to me by the defendants, and the same is just and reasonable.

In Testimony Whereof, I have hereunto set my hand and official seal at the city of New York, in the County of New York and State of New York, this 28th day of April, A. D. 1915.

F. Stanley Castyglone,
*Notary Public, Kings County.*

(F. S. Castyglone,
Notary Public,
Kings County,
N. Y.)

Certificate filed in New York County.
My Commission expires March 31, 1915.

Mr. Offield: How about the Constantine deposition, Mr. Reed?

Mr. Reed: We will put that in when we come to that branch of it but we are trying to finish our subjects so as to have a little coherence and we will put that in in connection with the subject as to when it was the Wrigley Company began manufacturing Spearmint Gum.

Mr. Offield: Oh, I see.

WILLIAM WRIGLEY, JR., recalled as a witness on behalf of the defendant, having been previously sworn, testified as follows:

*Direct Examination by Mr. Aldrich.*

Q. Mr. Wrigley, who is your agent in New York?

A. We have no agent. We have a factory there.

Q. Well, your representative then?

A. We have a factory there.

Q. You have a factory there. What relation, to be specific then, does Mr. Burke J. Atwater bear to your business?

A. He is vice president and manager of the New York branch.

Q. Vice president of the Wrigley Company?

1281 A. Yes, sir, and one of the directors.

Q. And manager of the New York agency?

A. Yes, sir.

Q. He went there to open the agency in November or December, 1907; that is true, isn't it?

A. Yes.

Q. Were you present at the time he testified in the Pulver litigation?

A. I was not.

Q. He has been your New York representative from 1907 up to and including the present time?

A. Yes, sir.

Q. I wish to call your attention to a trade-mark registered by your people, or issued January 19th, 1915, and ask you if you are familiar with that trade-mark?

(Counsel hands document to witness.)

A. Yes, I am familiar with that.

Mr. Aldrich: I offer in evidence trade-mark Number

102,000, registered by William Wrigley, Jr. & Company, January 19th, 1915, and ask that it be marked Defendant's Exhibit Number 2.

(Said document so marked Defendant's Exhibit Number 2, is in the words and figures as follows, to wit:)

1282 Mr. Aldrich: Q. I also show you the registered trade-mark Number 102,001, registered by your Company.

A. That is the same one, isn't it?

Mr. Aldrich: No. They seem to be the same thing but they are different numbers and seem to be twice registered, one as 102,000 and the other as 102,001.

Mr. Offield: This is the Double Mint.

Mr. Aldrich: Yes, they are the Double Mint.

The Witness: This is the Double Mint too (indicating).

Mr. Aldrich: They are same you see but evidently they are different numbers. I wish you would explain that. Let that be marked anyhow as Exhibit 3.

(Said Document, so marked Defendant's Exhibit Number 3, is in the words and figures as follows, to wit:)

1283 Mr. Aldrich: I next offer in evidence, if the court please, the trade-mark registered by William Wrigley, Jr. & Company under date of August 20th, 1907. It was applied for in April, April 7th, 1907. I ask that it be marked Defendant's Exhibit 4. That is the trade-mark of the spearhead.

(Said document, so marked Defendant's Exhibit Number 4, and is in the words and figures as follows, to wit:)

Defendant's Exhibit 4. 1284 2-394

DEPARTMENT OF THE INTERIOR

United States Patent Office.

To all persons to whom these presents shall come, Greeting:

This Is to Certify that the annexed is a true copy from the Records of this office of the Certificate of Registration, Statement, Declaration and Drawing in the matter of the

Trade-mark Registered by
Wm. Wrigley Jr., Co.,
August 20, 1907, No. 64,816
for
Chewing-Gum.

The certificate of registration was granted for the term of twenty-years and so far as is disclosed by the records of this office, said certificate is still in full force and effect.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this 7th day of February, in the year of our Lord one thousand nine hundred and seventeen and of the Independence of the United States of America the one hundred and forty-first.

F. W. H. CLAY,
*Acting Commissioner of Patents.*

(Seal Patent Office United States of America.)

1285 2-372 No. 64,816.

THE UNITED STATES OF AMERICA,

To all to whom these Presents shall come:

This Is to Certify that by the records of the United States Patent Office it appears that Wm. Wrigley Jr., Co., of Chicago, Illinois, a corporation organized under the laws of the State of Illinois, did on the 8th day of April, 1907, duly file in said Office an application for Registration of a certain

Trade-Mark

for Chewing-Gum, that it duly filed therewith a drawing of the said Trade-Mark, a statement relating thereto, and a

written declaration, duly verified, copies of which are hereto annexed, and has duly complied with the requirements of the law in such case made and provided, and with the regulations prescribed by the Commissioner of Patents.

And, upon due examination thereof, it appearing that the said applicant is entitled to registration of its said Trade-Mark under the law, the said Trade-Mark has been duly Registered to Wm. Wrigley Jr., Co., and its successors or assigns, in the United States Patent Office, this 20th day of August, 1907.

This certificate shall remain in force for Twenty
1286 Years, unless sooner terminated by law.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this twentieth day of August, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States the one hundred and thirty-second.

C. C. BILLINGS,
(Seal) *Acting Commissioner of Patents.*
6-430

1287 Trade-Mark

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No. 64,816 Registered Aug. 20, 1907.

Wm. Wrigley Jr. Co.

Chewing Gum.

Application filed Apr. 8, 1907.

(Representation of a spear.)

Witnesses,
S. F. MANN,
JAMES R. OFFIELD.

Proprietor,
WM. WRIGLEY JR. CO.
By OFFIELD, TOWLE AND LINTHICUM,
*Atty's.*

1288 UNITED STATES PATENT OFFICE.

Wm. Wrigley Jr. Co., of Chicago, Illinois.

Trade-Mark for Chewing-Gum.

No. 64,816, Statement and Declaration

Registered Aug. 20, 1907.

Application filed April 8, 1907, Serial No. 26575.

STATEMENT.

To all whom it may concern;

Be it known that Wm. Wrigley Jr. Co., a corporation duly organized under the laws of the State of Illinois, and located in the city of Chicago, county of Cook and said State, and doing business at No. 88 Michigan avenue, in said city of Chicago, State of Illinois, has adopted for its use the trade-mark shown in the accompanying drawing, for chewing-gum, in Class No. 47, Confectionery.

The trade-mark has been continuously used in the business of said corporation since January 1, 1900.

The trade-mark is applied or affixed to the goods, or to the wrappers or packages containing the same, by printing on said wrappers or packages the trade-mark.

WM. WRIGLEY JR. CO.,
By WILLIAM WRIGLEY, JR.,
*President.*

1289 DECLARATION.

State of Illinois county of Cook ss.

WILLIAM WRIGLEY, JR. being duly sworn, deposes and says that he is the president of the corporation, applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by said corporation in commerce among all the States of the United States; that the drawing presented truly represents the trade-mark sought to be registered; and that the specimens show the trade-mark as actually used upon the goods.

WILLIAM WRIGLEY, JR.

Subscribed and sworn to before me this 5th day of April, 1907.

EDWARD W. ECKERLY
(L. S.) *Notary Public.*

1290 Mr. Aldrich: And then I offer in evidence the record in the trade mark applied for in August, 1907, and serial number 31,682, and this is the one, as I understand, that was rejected by the Court of Appeals.

Mr. Offield: That is the one the opposition filed against DeWane Norris with the word "Spearmint."

Mr. Aldrich: Yes, let it be marked Defendant's Exhibit 5.

(Said document, so marked Defendant's Exhibit Number 5, is in the words and figures as follows, towit:)

1291 2-390

UNITED STATES OF AMERICA

DEPARTMENT OF THE INTERIOR

United States Patent Office.

To all to whom these presents shall come, Greeting:

This Is To Certify that the annexed is a true copy from the Records of this Office of the File Wrapper, Contents and Drawing in the matter of the

Abandoned Application for the Registration of a Trade-Mark of

William Wrigley Jr. & Company,

Filed December 12, 1907, Serial Number 31,682

for

Chewing Gum.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington, this 19th day of February, in the year of our Lord one thousand nine hundred and seventeen and of the Independence of the United States of America the one hundred and forty-first.

(Signed) F. W. H. CLAY

(Seal of Patent Office United States of America) *Acting Commissioner of Patents.*

1292 2-439

T. M. Serial No. 31,682 (Series of 1905) 1907 Div. (Ex'rs Book) 123-13

Trade-Mark No.

Act of, February 20, 1905.

Name William Jr. & Company
Opposition Sustained.
of Chicago
County of
State of Illinois
For Chewing Gum

Parts of Application Filed

| | |
|---|---|
| Petition | Dec. 12, 1907 |
| Declaration | " " 1907 |
| Statement | " " 1907 |
| Specimens | " " 1907 |
| Drawings | " " 1907 |
| Fee Cash $10 | Dec. 12 1907 |
| " Cert. Dep. | , 190 |
| Appl. filed complete | Dec. 12, 1907 |

Examined for Publication E. L. Chapman Jan. 28, 1908
Examined for Registration , 190
Countersigned For Commissioner.
1293 Notice of Allowance , 190
Registered , 190
Representative

Associate Attorney

Attorney Offield, Towle & Linthicum
Monadnock Block
Chicago
Ill.

T. M. Serial No. 31,682 Date of Filing , 190
Trade-Mark No. " " Registration , 190
Used 10 years

Published in O. G.
Feb. 25 1908.

1294 $10 Received
Ck Dec 12 1907 Z
Chief Clerk U. S. Patent Office

(Printed Letter Head Omitted)

Chicago, Dec. 10, 1907.

Hon. Commissioner of Patents,
Washington D. C.

Sir:

Enclosed please find petition statement and declaration together with one sheet of drawings and five (5) specimens in the matter of the Trade Mark application of William Wrigley, Jr. & Co., also please find out check for $10.00 to cover Government fee.

Very respectfully
OFFIELD, TOWLE & LINTHICUM.

JRO-M
Encl.

1295 Serial No. 31,682 Paper No. O. K.
Application.

Mail Room
Dec 12 1907
U. S. Patent Office.

PETITION

To the Hon. Commissioner of Patents,
Washington, D. C.

Sir:

The undersigned presents herewith a drawing and five specimens of its trade mark and requests that the same, together with the accompanying statement and declaration, may be registered in the United States Patent Office in accordance with the law in such cases made and provided; and hereby appoints Charles K. Offield, Henry S. Towle and Charles C. Linthicum, Monadnock Block, Chicago, County of Cook, Illinois, to act as its attorneys in preparing and prosecuting this application; to sign the drawing; to make any necessary amendments and to perform every act which is or may be required and necessary for the same, and to receive the certificate of registration.

WILLIAM WRIGLEY JR. COMPANY
By WILLIAM WRIGLEY JR.
*President.*

Dated Chicago, Illinois
December 9 1907.

1296 STATEMENT.

To All Whom It May Concern

Be it known, That William Wrigley Jr. & Company, a corporation duly organized under the laws of the State of Illinois, and located in the City of Chicago, County of Cook and said State, and doing business at No. 88 Michigan Avenue in said City of Chicago, State of Illinois, has adopted for its use the Trade Mark Shown In the accompanying
per A drawing for Chewing Gum in Class No. 46.
" " Foods and ingredients of foods.
The Trade Mark has been continuously used in the business of said Corporation since about November 1st, 1894.

The Trade Mark is applied or affixed to the goods or to the wrappers or packages containing same by printing on said wrappers or packages said Trade Mark.

WILLIAM WRIGLEY JR. & COMPANY
By WILLIAM WRIGLEY JR.
*President*

Dated Chicago, Illinois,
December 9, 1907.

1297 DECLARATION

State of Illinois } ss.
County of Cook }

WILLIAM WRIGLEY, JR., being duly sworn, deposes and says: That he is president of the Corporation the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said Corporation is the owner of said Trade Mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has a right to use said mark either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said mark is used by said Corporation in commerce among all the States of the United States, and between the United States and foreign Nations and particularly with Mexico; that the drawing presented truly represents the mark sought

to be registered; that the specimens show the mark as actually used upon the goods; and that the mark has been in actual use as the Trade Mark of the applicant and applicant's predecessors from whom title was derived, for ten years next preceding the passage of the Act of February 20, 1905, and that, to the best of his knowledge and belief, such use has been exclusive.

WILLIAM WRIGLEY JR

Subscribed and sworn to before me, a Notary Public, this 9th day of December, A. D. 1907.

JAMES R. OFFIELD
*Notary Public.*

(Seal)

1298 2-236

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Room 159

Address only "The Commissioner of Patents, Washington, D. C." and not any official by name.

Paper No. 1—L.

All communications respecting this application should give the serial number, date of filing, the name of the applicant.

J. R. S.

DEPARTMENT OF THE INTERIOR
United States Patent Office

Washington Jan. 21, 1908.
Mailed " " "

William Wrighley Jr. & Company,
c/o Offield, Towle & Linthicum,
Chicago, Ill.

Please find below a communication from the Examiner of Trade-Marks and Designs regarding your application for trade-mark; filed December 12, 1907; Ser. No. 31,682

E. B. MOORE
*Commissioner of Patents.*

6-1608

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The class of merchandise should be amended to read "Class 46, Foods and ingredients of foods". (See revised list of classes published in the Official Gazette of December 17, 1907.)

(Mark—Spearmint.)

E. L. CHAPMAN
*Examiner*

1299 Serial No. 31.682 Paper No. 2
Amendt A

Mail Room
Jan 25 1908
U. S. Patent Office

IN THE UNITED STATES PATENT OFFICE.

In Re Application of :
William Wrigley Jr. & Co. :
Trade Mark :
Filed December 12, 1907, :
Serial No. 31682 :

AMENDMENT.

Hon. Commissioner of Patents,
Washington D. C.

Sir:

We hereby amend the statement in the above entitled application as follows:

In the seventh line cancel the class number "47" and substitute the number 46; in the next line, cancel the word "Confectionery" and substitute Foods and ingredients of foods.

We believe that this amendment places this application in condition for publication.

Respectfully submitted
OFFIELD, TOWLE & LINTHICUM

Chicago, Jan. 23, 1908.

1300 2-237

Trade-Mark Division.

All communications should be addressed to "The Commissioner of Patents, Washington D. C."

Paper No. 3.

All communications respecting this application should give the serial number and date of filing.

DEPARTMENT OF THE INTERIOR

United States Patent Office

Washington, D. C. Jan. 29, 1908.

Mailed " " "

William Wrigley Jr. & Company
C/o Offield Towle & Linthicum,
Chicago, Ill.

Your application for the Registration of a Trade-Mark for chewing gum; filed Dec. 12, 1907, Ser. No. 31,682, has been examined and passed for publication, in compliance with section 6 of the act authorizing the Registration of Trade-Marks, approved February 20, 1905.

The mark will be published in the Official Gazette of Feb. 25, 1908.

Any person who believes he would be damaged by the registration of this mark may oppose the same by filing notice of opposition, stating the grounds therefor, in the Patent Office within thirty days after the publication thereof, 1301 which said notice of opposition shall be verified by the person filing the same before one of the officers mentioned in Section 2 of the act of February 20, 1905.

If no notice of opposition is filed within said time the Commissioner may issue a certificate of registration.

Copies of the Trade-Mark portion of the Official Gaxette containing the publication of the mark may be obtained as soon as published at five cents each. Coupons are receivable therefor.

Respectfully,
E. B. MOORE,
*Commissioner of Patents.*

6-1872

1302 2-239

OPPOSITION.

Opposition No. 565 Paper No. 4.
Name, William Wrigley Jr. & Company
Serial No. 31682
Title, Chewing Gum
Filed, December 12, 1907
Opposition by Du Wane Norris

Decisions of—

Ex'r of Interferences, Sustained Dated Oct 6. 1908.
Commissioner, Affirmed,
(Exr. of Intrf's.) Dated April 16, 1909.
Court of Appeals, Affirmed (Comm) Dated Nov. 30, 1909.

Remarks

19560blm8-05

1303 CLASSIFICATION.

Trade-Marks,

Class 46, Foods and ingredients of foods.

1907.

Contents:

Print March 21-1908.
Application.....papers. O. K.
1. Letter, Jan. 21-1908.
2. Amendt. A. Jan. 25-1908
3. P. N. Jan. 29-1908
4. Opp. Brief March 12, 1908.

Trade-Mark
Merchandise
Chewing Gum

1304 Opposition Sustained.

Spearmint.

Witnesses,
S. F. MANN,
JAMES R. OFFIELD.

Proprietor
WILLIAM WRIGLEY JR. & COMPANY

By OFFIELD, TOWLE & LINTHICUM.
*Atty's*
Jan. 28 8

1305 Mr. Aldrich: I will offer in evidence a trade-mark registered by L. P. Larson, Jr. Company, July 21st, 1914, Numbers 98,540. That is on their Wintermint, if the Court please. I ask that that be marked Defendant's Exhibit 6.

(Said document, so marked Defendant's Exhibit Number 6, is in the words and figures following towit:)

1306 2-394

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DEPARTMENT OF THE INTERIOR

United States Patent Office.

To all persons to whom these presents shall come, Greeting:

This Is To Certify that the annexed is a true sopy from the Records of this office of the Certificate of Registration, Statement, Declaration and Drawing in the matter of the

Trade-Mark Registered by

L. P. Larson, Jr., Co.

July 21, 1914, No. 98,540,

for

Chewing Gum.

The certificate of registration was granted for the term of twenty years, and so far as is disclosed by the records of this office, said certificate is still in full force and effect.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this 27th day of January, in the year of our Lord one thousand nine hundred and seventeen and of the Independence of the United States of America the one hundred and forty-first.

R. F. WHITEHEAD
*Acting Commissioner of patents.*

(Seal Patent Office United States of America)

1307 2-372 No. 98540

THE UNITED STATES OF AMERICA,

To all to whom these Presents shall come;

This Is To Certify that by the records of the United States Patent Office it appears that L. P. Larson, Jr., Co., of Chicago, Illinois, a corporation organized under the laws of the State of Illinois, did, on the 3rd day of February, 1914, duly, file in said Office and application for Registration of a certain.

Trade-Mark

for Chewing Gum,

that it duly filed therewith a drawing of the said Trade-Mark a statement relating thereto, and a written declaration, duly verified, copies of which are hereto annexed, and has duly complied with the requirements of the law in such case made and provided, and with the regulations prescribed by the Commissioner of Patents.

And, upon due examination thereof, it appearing that the said applicant is entitled to registration of its said Trade-Mark under the law, the said Trade-Mark has been duly Registered to L. P. Larson, Jr., Co., its successors or assigns, in the United States Patent Office, this twenty-first day of July, 1914.

This certificate shall remain in force for Twenty Years, unless sooner terminated by law.

1308 In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this twenty-first day of July, in the year of our Lord one thousand nine hundred and fourteen, and of the Independence of the United States the one hundred and thirty-ninth.

R. F. WHITEHEAD

(Seal) *Acting Commissioner of Patents.*

6-430

1309 UNITED STATES PATENT OFFICE

L. P. Larson, Jr. Co., of Chicago, Illinois.

Trade-Mark for Chewing-Gum.

98,540 Registered July 21, 1914

Application filed February 3, 1914. Serial No. 75,652.

STATEMENT.

To all whom it may concern;

Be it known that L. P. Larson, Jr., Co., a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Illinois, and having its principal office and place of business at No. 321 North Sheldon street, in the city of Chicago, in said State, has adopted for its use the trade-mark shown in the accompanying drawing, the word "Gum" being disclaimed, for chewing-gum in Clas 46, Foods and ingredients of foods.

This trade-mark has been continuously used by the said corporation since the 30th day of December, A. D. 1913.

The trade-mark is displaced on the packages containing the goods by printing the same upon wrappers and boxes used on the goods for sale.

L. P. LARSON, JR., CO.,
By LOUIS P. LARSON, JR.
*President.*

1310 (Representation of "Wintermint" Trade-Mark)

DECLARATION.

State of Illinois county of Cook ss.

LOUIS P. LARSON, JR., being duly sworn deposes and says that he is president of the corporation the applicant named in the foregoing statement; that he verily believes

that the foregoing statement is true; that he believes the said corporation is the owner of the trade-mark sought to be registered, that no other person, firm, corporation or association to the best of his knowledge and belief has the right to use said trade-mark, either in the identical form or in such near resemblance thereto as might be calculated to deceive; that such trade-mark is used by the said corporation in commerce among the several States of the United States and that the drawing presented for record truly represents the trade-mark sought to be registered and the specimens (or facsimiles) show the trade-mark as actually used upon the goods.

LOUIS P. LARSON, JR.

Subscribed and sworn to before me, a notary public, within and for said county and State, this 31st day of January, 1914.

G. L. TOALE

(L. S) *Notary Public.*

---

Copies of this trade-mark may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington D. C."

1311 Mr. Aldrich: I also offer in evidence trade-mark Numbered 98,540 issued July 21st, 1914, to L. P. Larson Jr. Company and ask that it be marked Defendant's Exhibit 7.

(Said document, so marked Defendant's Exhibit Number 7, is in the words and figures, as follows, towit:)

1312 2-390

UNITED STATES OF AMERICA

DEPARTMENT OF THE INTERIOR,

United States Patent Office.

To all to whom these presents shall come, Greeting:

This Is To Certify that the annexed is a true copy from the Records of this Office of the Facsimile in the matter of the

Trade-Mark Registered by

L. P. Larson, Jr. Co.,

July 21, 1914, Numbered 98,540

for

Chewing-Gum.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington, this 23rd day of June, in the year of our Lord one thousand nine hundred and fifteen and of the Independence of the United States of America the one hundred and thirty-ninth.

J. F. NEWTON

(Seal Patent Office United States of America) *Acting Commissioner of Patents.*

(United States Internal Revenue Documentary stamp, marked; "Canceled Jun 23 1915 U. S. Patent Office")

1313 (L. P. L. Wintermint Gum Wrapper)

1314 Mr. Aldrich: I also offer in evidence trade-mark numbered 98,540 issued to L. P. Larson, Jr. Company, record July 21st, 1914, and ask that it be marked Defendant's Exhibit 8.

(Said document, so marked Defendant's Exhibit Number 8, is in the words and figures as follows, towit:)

1315 2-390

UNITED STATES OF AMERICA,

DEPARTMENT OF THE INTERIOR,

United States Patent Office.

To all to whom these presents shall come, Greeting,

This Is To Certify that the annexed is a true copy from the Records of this Office of the File Wrapper and Contents in the matter of the

Trade-Mark Registered by

L. P. Larson, Jr., Co.,

July 21, 1914, Number 98,540

for

Chewing-Gum.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington, this 22nd day of June, in the year of our Lord one thousand nine hundred and fifteen and of the Independence of the United States of America the one hundred and thirty-ninth.

J. T. NEWTON.

(Seal Patent Office United States of America) *Acting Commissioner of Patents*

(U. S. Internal Revenue Documentary stamp, marked: "Canceled Jun 22 1915 U. S. Patent Office."
6-1625

1316 2-439

T. M. Serial No. (Series of 1905) *(*Div.*)
75,652 1914 (Ex'r's Book). 85-4

Trade-Mark No. 98540
Act of February 20, 1905.

Name L. P. Larson, Jr., Co.,
of Chicago,
County of
State of Illinois
For Chewing Gum.

Parts of Application Filed

| | |
|---|---|
| Petition | Feb. 3, 1914 |
| Declaration | " " 1914 |
| Statement | " " 1914 |
| Specimens | " " 1914 |
| Drawings | " " 1914 |
| Fee Cash $10 | Feb. 3, 1914 |
| " Cert. Dep. | , 191 |
| Appl. filed complete | Feby. 3, 1914 |

Examined for Publication J. Carnes May 4, 1914
Examined for Registration J. Carnes June 24, 1914
*(*Countersigned*) By
*(*For*) Commissioner.
Notice of Allowance June 26, 191
Registered July 21, 1914
Representative.
1317 Associate Attorney

Attorney Arthur E. Wallace,
#537 S. Dearborn St.
Chicago, Ill.

T. M. Serial No. 75,652 Date of Filing , 191
Trade-Mark No. " " Registration

4403B1224—09
Published in O. G.
May 19, 1914.

*Matter in italics in parentheses, stricken out in original transcript.

1318 $10 Received.
CK Feb. 3 1914 G. Chicago January 31, 1914.
Chief Clerk U. S. Patent Office
Commissioner of Patents,
Washington D. C.
Dear Sir:

I hand you herewith application for registration of trade-mark in behalf of L. P. Larson Jr. Co., together with check for $10.00 to cover your filing fees thereon.

Kindly file and acknowledge receipt of the same and oblige

Yours very truly,
ARTHUR E. WALLACE
*Attorney for Applicant.*

AEW. O'H.
Encl.

1318½ Serial No. 75,652 Paper No. O. K.
Application

Mail Room
Feb 3, 1914
U. S. Patent Office

PETITION.

To the Commissioner of Patents:

The undersigned presents herewith a drawing and five specimens or fac-similes of its trade-mark, and requests that the same, together with the accompanying statement and declaration, may be registered in the United States Patent Office in accordance with the law in such cases made and provided.

L. P. LARSON JR. CO.
By LOUIS P. LARSON JR.
*President*

Dated Jan 31, 1914

---

POWER OF ATTORNEY

Know all Men by these Presents, that L. P. Larson Jr. Co. of Chicago, Illinois has made, constituted and appointed Arthur E. Wallace, of 537 South Dearborn St., Chicago, Ill., Registered Attorney No. 5706, its true and lawful attorney, to prosecute before the United States Commissioner of Patents an application for Registration of its Wintermint "L.

P. L. and Design" trade-mark. They authorize their said attorney, Arthur E. Wallace, to sign whatever applica-
1319 tions or papers are necessary in the premises, hereby giving and granting to their said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the prosecution of said application, hereby ratifying and affirming all that their said attorney may do or lawfully cause to be done in virtue hereof.

In testimony hereto they have hereunto set their hand and seal this 31st day of January A. D. 1914.

L. P. Larson, Jr. Co
By Louis P Larson Jr
*President*

Witness:

1320 STATEMENT.

To All Whom it May Concern:

Be It Known That L. P. Larson Jr. Co., a corporation duly organized existing and doing business under and by virtue of the laws of the state of Illinois and having its principal office and place of business at No. 321 North Sheldon Street, in the City of Chi-
Per A cago, in said State has adopted for its use the trade-mark shown in the accompanying drawing the word "gum" being disclaimed for Chewing Gum in class 46, Foods and Ingredients of Foods.

This trade-mark has been continuously used by the said corporation since the 30th day of December A. D. 1913.

The trade-mark is displayed on the packages containing the goods by printing the said upon wrappers and boxes used on the goods for sale.

L. P. Larson Jr. Co.
By Louis P. Larson Jr.
*President*

1321 DECLARATION.

State of Illinois } ss.
County of Cook }

LOUIS P. LARSON JR. being duly sworn deposes and says that he is President of the Corporation the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that he believes the said Corporation is the owner of the trade-mark sought to be registered, that no other person, firm, corporation or association to the best of his knowledge and belief has the right to use said trade-mark, either in the identical form or in such near resemblance thereto as might be calculated to deceive; that such trade-mark is used by the said Corporation in commerce among the several States of the United States and that the drawing presented for record truly represents the trade-mark sought to be registered and the specimens (or facsimiles) show the trade-mark as actually used upon the goods

LOUIS P. LARSON JR

Subscribed and sworn to before me, a Notary Public, within and for said County and State, this 31st day of January 1914.

G. L. TOALE
*Notary Public*

(Seal)
My Commission Expires July 5-14

1322 2-236

Room 163
Address only "The Commissioner of Patents Washington, D. C." and not any official by name.

Paper No. 1-L.
All communications respecting this application should give the serial number, date of filing, the name of the applicant.

DEPARTMENT OF THE INTERIOR
United States Patent Office

Be-R
Washington April 10, 1914.
Mailed " " "

Arthur E. Wallace,
537 So. Dearborn Street,
Chicago, Ill.

Please find below a communication from the Examiner of

Trade-Marks and Designs regarding the application of L. P. Larson, Jr., Co., Feb 3, 1914, Serial No. 75, 652.

THOMAS EWING
*Commissioner of Patents.*

6-1608

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The word "gum" appearing on the drawing should be removed or disclaimed in the statement for the reason that it is descriptive and not capable of exclusive appropriation.

A search of Class 46 fails to show that the mark is anticipated.

J. CARNES
*Examiner*

Wintermint
Be

1323 Mail Room
Apr 20 1914
U. S. Patent Office

Chicago April 17, 1914.
Serial No. 75652 Paper No. 2.
Amdt. A.

Commissioner of Patents,
Washington D. C.

Dear Sir:

In reply to your communication of April 10, 1914 in re trade-mark application of L. P. Larson Jr., Co., filed February 3, 1914, Serial No. 75,652 applicant disclaims the word "gum" appearing on the drawing and request that the application be passed to publication.

Yours very truly,
ARTHUR E. WALLACE
*Attorney for Applicant.*

AEW. O'H.

1324 2-237

Trade Mark Division — Paper No. 3

Address only "The Commissioner of Patents, Washington, D. C." — All communications respecting this application should give the serial number and date of filing.

DEPARTMENT OF THE INTERIOR — D

United States Patent Office

Washington May 5, 1914.

Mailed " " "

Arthur E. Wallace
537 S. Dearborn St.,
Chicago, Ill.

The application for the Registration of a Trade-mark filed by L. P. Larson, Jr., Co., Feb. 3, 1914, Ser. No. 75,652, for chewing gum, has been examined and passed for publication, in compliance with section 6 of the act authorizing the Registration of Trade-Marks, approved February 20, 1905.

The mark will be published in the Official Gazette of May 19, 1914.

Any person who believes he would be damaged by the registration of this mark may oppose the same by filing notice of opposition, stating the grounds therefor, in the Patent Office within thirty days after the publication thereof, which said notice of opposition shall be verified by the person
1325 filing the same before one of the officers mentioned in section 2 of the act of February 20, 1905.

If no notice of opposition is filed within said time the Commissioner may issue a certificate of registration.

Copies of the Trade-Mark portion of the Official Gazette containing the publication of the mark may be obtained as soon as published at five cents each.

Respectfully,

THOMAS EWING
*(*E. B. Moore*)
*Commissioner of Patents*

6-1872

*Matter in italics in parentheses, stricken out in original transcript.

1326 2-186

JWC No. 75,652

Address only "The Commissioner of Patents, Washington, D. C."

DEPARTMENT OF THE INTERIOR

United States Patent Office

Washington June 26, 1914.

L. P. Larson Jr. Co.,
Sir:

Your Application for Registration of Trade-Mark for Chewing gum. Trade Mark Will Be Jul. 21 1914 Registered

has been examined and allowed.

The Certificate of Registration will be issued and forwarded to you as soon as practicable in due order of business.

Very respectfully,

THOMAS EWING
*Commissioner of Patents.*

Arthur E. Wallace,
537 S. Dearborn St.,
Chicago, Ill.

1327 UNITED STATES PATENT OFFICE

L. P. Larson, Jr., Co., of Chicago, Illinois.

Trade-Mark for Chewing-Gum.

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98,540 Registered July 21, 1914.

Application filed February 3, 1914, Serial No. 75,652

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STATEMENT.

To all whom it may concern;

Be it known that L. P. Larson, Jr. Co., a corporation duly organized, existing, and doing business under and by virtue

of the laws of the State of Illinois, and having its principal office and place of business at No. 321 North Sheldon street, in the city of Chicago, in said State, has adopted for its use the trade-mark shown in the accompanying drawing, the word "Gum" being disclaimed, for chewing-gum, in Class 46, Foods and ingredients of foods.

This trade-mark has been continuously used by the said corporation since the 30th day of December, A. D. 1913.

The trade-mark is displayed on the packages containing the goods by printing the same upon wrappers and boxes used on the goods for sale.

L. P. LARSON, JR., CO.,
By LOUIS P. LARSON, JR.,
*President.*

(Wintermint Trade-Mark)

1328 DECLARATION.

State of Illinois county of Cook ss.

LOUIS P. LARSON, JR., being duly sworn deposes and says that he is president of the corporation the applicant named in the foregoing statement; that he verily believes the foregoing statement is true; that he believes the said corporation is the owner of the trade-mark sought to be registered, that no other person, firm, corporation or association to the best of his knowledge and belief has the right to use said trade-mark, either in the identical form or in such near resemblance thereto as might be calculated to deceive; that such trade-mark is used by the said corporation in commerce among the several States of the United States and that the drawing presented for record truly represents the trade-mark sought to be registered and the specimens (or facsimiles) show the trade-mark as actually used upon the goods.

LOUIS P. LARSON, JR.

Subscribed and sworn to before me, a notary public, within and for said county and State, this 31st day of January, 1914.

G. L. TOALE,
(L. S.) *Notary Public*

---

Copies of this trade-mark may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

1329 CLASSIFICATION.

Trade-Marks.

Class 46, Foods and ingredients of foods.

1914.

CONTENTS:

Brief.

Application_____papers O. K.

1. Letter April 10 1914
2. Amd't A—Apr. 20-1914
3. P. N. May 5-1914
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12.
13.
14.

Trade Mark.

Claims use Since the 30th day of Dec. 1913.

The word "gum" being disclaimed

Merchandise.

Chewing gum.

1330 Mr. Aldrich: That is all, Mr. Wrigley.

Mr. Offield: There is no cross-examination.

The Court: Call your next witness.

GERTRUDE E. ADAMS called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Aldrich.*

Q. You may state your name to the Court, Miss Adams, if you please.
A. Gertrude E. Adams.
Q. Where do you reside?
A. 736 South Oakley Boulevard.
Q. How long have you lived in Chicago?
A. 38 years.
Q. Were you at any time in the service of the Zeno Manufacturing Company, and, if so, when and in what capacity?
A. I was bill and order clerk for the Zeno Manufacturing Company from the spring of 1903 until approximately the first of September, 1905.
Q. You may state whether or not in that position you were able to know what brands of gum were manufactured and shipped out by the Zeno Manufacturing Company to William Wrigley Jr. & Company?
A. I know all of the brands of gum that we shipped to him.
1331 Q. Yes. You may state whether or not they were shipped under numeral numbers or whether they were shipped and billed in the name of the gum?
A. In the name of the gum.
Q. And you may state whether also during the period in which you were in the service of the Zeno Manufacturing Company they were manufacturing and billing to Mr. Wrigley and Spearmint gum?
A. No, sir.
Q. They were not? Is your answer no, sir?
A. My answer is no.
Q. You were in the service of the Company, as I understand you, then at the time of the fire in the Zeno Manufacturing Company on December 31st, 1904?
A. Yes, sir.
Q. State whether or not the books of the Zeno Manufacturing Company were destroyed on that occasion?
A. What do you mean by the books?
Q. Well, I mean the contents of the books that were in the safe and things of that character.
A. No, sir.

*Cross-Examination by Mr. Offield.*

Q. Were you present immediately after the fire, when
1332 the safes were opened?

A. The safes were not opened immediately after the fire.

Q. How long after the fire were they opened?

A. I couldn't say that. The morning of the fire, it burned all day. It was full of water and ice.

Q. The fire was December 31st, 1904, wasn't it?

A. Yes, sir.

Q. Now when were you next at the place where the building was burned down?

A. I was there that morning.

Q. The morning of January 1st?

A. The morning of the fire.

Q. The morning of December 31st or the morning of January 1st?

A. I don't know about the date but the morning of the fire, while it was burning, I was there. The fire started about 5:00 in the morning, I believe, and we came to work in the morning and we were taken into the paid company's factory and then into some stores which they had rented just east of the Pail Company's factory.

Q. Where was the factory of the Paint Company at that time?

A. The Pain Company's factory was just east of Halsted on the north side of the street near Van Buren.

Q. And the building, as I understand it, was totally destroyed, wasn't it?

A. Yes, sir.

Q. And all fallen down?

1333 A. The building next door where the fire was, as I understand, had fallen over and crushed our building and crushed the machinery down there.

Q. Now, when were the safes taken out from the burned mass?

A. I couldn't say that. I know it was shortly afterwards. We were there busy working, trying to get gum out for the machines.

Q. Where were you busy working at that time?

A. In these stores; whatever gum they could get it from different little stores around, candy stores and like that, they

went out and got. They brought it in and we distributed it to their machines.

Q. And you were working in what position in the store near by?

A. Bill and order clerk: doing everything that came along during that time.

Q. That was in January, 1905, was it, right after the fire?

A. Yes, sir, right after the fire.

Q. Now, where were these safes, when they were opened after the fire?

A. I don't know where they were opened. I know where they stood before the fire.

Q. Where did they stand after the fire, at the time they were opened?

A. That I don't know.

Q. Were you there when they were opened?

A. No, sir, I wasn't.

Q. After they were opened—how long after they were 1334 opened did you see the contents of them?

A. Right after they took the contents out I saw them, because they were still wet.

Q. The contents were still wet?

A. Yes, sir.

Q. What condition were the contents in?

A. The safe that had stood in the cashier's desk took water. The safe which I was responsible for opening and closing did not.

Q. And what records were in the safe that you were responsible for, Miss Adams?

A. I couldn't name what the books were but they were old record books and I used to put my order file and all my records in there.

Q. What records were in the safe that you were not responsible for?

A. I presume all the cashier's records and bookkeeper's records.

Q. Now, at the time you were bill clerk for the Zeno Manufacturing Company, did they bill out to the Wrigley Company on the letter heads of the Zeno Manufacturing Company?

A. We billed them out on the regular billheads of the Zeno Manufacturing Company.

Q. Was that the billhead of the Zeno Manufacturing Company?

A. Yes, sir.

Q. Were there any of these bill that went out to the Wrigley Company on the billheads of the Rubber Paint Company?

1335 A. Not that I made.

"In other words, the Wrigley business was not kept separate from the Zeno Manufacturing Company business by billing out on the Rubber Paint Company's literature the goods for the Wrigley Company and billing out the Zeno goods on the Zeno Paper?

A. Not while I was there.

Q. The entire orders of the Wrigley Company were run through the regular business of the Zeno Company, as I understand it?

A. Well, they were handled differently.

Q. How was it handled differently?

A. Gum that was shipped to Wrigley Company was brought downstairs and loaded on to the trucks and a memo was made of the load going to Wrigley and from that I made a memorandum bill which I gave to the clerk that came in with the memo. The shipping clerk, I gave him the memorandum bill, and I presume he gave it to the driver. I don't know. That had not prices on it, as I remember.

Q. Did it have any names on it?

A. Oh, yes, the heading, just the same. It was all billed just according to the name of the gum, so many boxes of pineapple so many boxes of licorice and so many boxes of Juicy Fruit, whatever it was.

Q. What brands of chewing gum were being made by 1336 the Zeno Company for the Wrigley Company in 1903?

A. As far as I can remember, their Wrigley's Juicy Fruit was the main one. There was pineapple, vanilla and licorice. Those are the only ones I can remember distinctly at that time. I am not positive of the others.

Q. Those are the only ones?

A. That I remember and could swear to.

Q. Are there any others that you can remember in 1905, besides those you have mentioned?

A. No, sir.

Q. So far as you know, in the years 1903 to 1905, the only flavors of chewing gum that were billed, at least through you, from the Zeno Company to the Wrigley Company were the gums of the flavors that your have mentioned?

A. Well, I have a faint recollection of one or two more but

not sufficient enough to swear to them. Those four I remember distinctly.

Q. And these boxes of gum that were billed from 1903 to 1905, inclusive to Wrigley & Company, were they all straight boxes of one kind of flavor in each box, or were there assorted flavors in each box frequently?

A. As near as I can remember—I would get the memo, you see, and I would bill it from the memo, so many boxes of so-and-so; so many boxes of each flavor.

Q. Were they billed as boxes of assorted flavors?

A. They may have been I don't know. I only remem-
1337 ber those four flavors.

Mr. Offield: That is all, your Honor.

*Redirect Examination by Mr. Aldrich.*

Q. When the gum came down from the manufacturing department, you may state whether it was all wrapped.

A. I never saw the inside of the boxes. I billed it from the memo.

Q. It was put up in boxes on the machine?

A. That is the way the memorandum read. I never saw it.

Mr. Aldrich: That is all, your Honor.

---

L. J. DISSER, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

*Direct Examinationby Mr. Aldrich.*

Q. State your name, Mr. Disser.

A. L. J. Disser.

Q. Where do you reside?

A. Ferguson, Missouri.

Q. How long have you resided there?

A. June 4th it will be three years.

1338 Q. What?

A. June 4th it will be three years.

Q. Were you ever in the service of the Zeno Manufacturing Company and, if so, at what time and in what capacity?

A. I started with the Zeno Manufacturing Company in 1899 as repair man, and 1901 or '02, I became a salesman.

Q. Where? In what part of the country?

A. In the City of Chicago.
Q. And then what, if anything further? How long were you with them?
A. I was with them from 1899 to 1910.
Q. Where did you do your repairs, with reference to the place where the gum was manufactured?
A. Back in the shipping room.
Q. And you may state whether or not in 1899 they were manufacturing any spearmint gum?
A. Never seen it.
Q. You may state whether or not your duties were such about the factory that you would have seen it if it had been there?
A. Yes, they brought it down in big boxes and loaded it on a wagon without any cover on, all the gum.
Q. The gum was all dressed, was it?
A. Yes, sir.
Q. Indicating by its dress what kind of gum it was?
A. Yes, sir, in boxes.
Q. And in boxes?
A. Yes, sir.
Q. When did they first commence to manufacture spearmint gum to your knowledge?
1339 A. The first time I saw spearmint gum was back in the shipping room in 1906.
Mr. Aldrich: You may take the witness.

*Cross-Examination by Mr. Offield.*

Q. In 1899, as repairman, in what class of work were you engaged; repairing what?
A. Zeno Gum Machines.
Q. That is, the wrapping machines or the mixing machines?
A. Zeno vending Machines.
Q. Zeno vending Machines?
A. Yes, sir.
Q. And you were engaged exclusively in the repairing of these vending machines for how long?
A. For about two years.
Q. That is until about 1901?
A. Yes.
Q. Now, at that time you went out into the city as a salesman, or on to the road?

A. Salesman, city.
Q. City salesman?
A. Yes, sir.
Q. And your sales were confided exclusively to the selling of the Zeno Company's products?
A. Yes, sir.
Q. What gums were being manufactured by the Zeno Manufacturing Company, according to your recollection, to your best recollection, in the year 1899, for William Wrigley Jr., & Company?
A. Well, 1889, I just started. Better make that about,
1340 1891. I wouldn't be well acquainted—I wouldn't know much about it then.
Mr. Aldrich: Q. Do you mean 1891 or 1901?
A. 1901.
Mr. Offield: Just a moment. I am questioning the witness.
A. 1901, I mean.
Q. 1901?
A. Yes. I wasn't well acquainted before that, you know.
Q. Well, you don't know what gums the Zeno Manufacturing Company were making for the Wrigley Company in 1899?
A. No, sir, not in 1899.
Q. And you wouldn't know, you don't know what gums the Zeno Manufacturing Company were making for William Wrigley Jr. & Company in 1900?
A. No, I don't, but 1901 I do.
Q. Now, what gums were the Zeno Manufacturing Company making for William Wrigley Jr. & Company in 1901?
A. As far as I can remember, they were making the Vassar, Cream de Fruit—I think it is Cream de Fruit, or Juicy Fruit, that is it. We used to make Cream de Fruit—Juicy Fruit, it is.
Q. Any others?
A. I couldn't say positively whether we were making Sweet-sixteen. I know we made it for them but I wouldn't say it was that year.
1341 Q. Well, were any additional gums being made in 1902 by the Zeno Company for the Wrigley Company, other than those you have named?
A. Not then, not that I know of.
Q. Or in 1903?
A. I don't know, but know in 1904.
Q. Why don't you know in 1903?
A. I don't remember any new packages then.

Q. Why do you remember 1904?
A. 1904, because I got more acquainted with the business.
Q. And when you became more acquainted with the business, it was then in the year 1904 that you learned of spearmint gum; is that right?
A. No, sir, 1906.
Q. 1906?
A. Yes, sir.
Q. I beg your pardon. Now, in 1904, how was your acquaintance with the business extended. In what way?
A. Why, got acquained wih he gum business in every way; picked up everything in the line of gum I could. I thought it was my duty as a salesman.
Q. Picked up other gum products that were on the market?
A. That was on the market, yes.
Q. Examined other competitors' products?
A. I never handled them, no, sir.
Q. So that in 1905, what gums were being made by the Zeno Manufacturing Company for William Wrigley Jr.
1342 & Company?
A. As far as I remember, the same gums.
Q. The same, no more or no less, just exactly the same as you have named?
A. Just about, yes, sir.
Q. Now, in 1906, how do you recall that date as being the time when you first saw Wrigley's Spearmint Gum?
A. Why, in 1906 he made his first big advertising campaign in Chicago. And I had a customer up on Fullerton Avenue, a confectioner, and they sent out a box of Spearmint Gum to every confectioner and every druggist in the City of Chicago, and this customer, he said, "Disser, I threw away that five-packages of Spearmint Gum. I never thought that it would be a success. Just see what a big success it is."
Q. This druggist, in 1907, said he had thrown away those five packages of gum?
A. Yes, sir.
Q. When did he throw it away?
A. In 1907.
Q. 1907?
A. Yes, that was in the—that was when he told me.
Q. When did he get the five packages of Spearmint Gum?
A. In 1907. He had them about a week and threw them away.
Q. And he said he never thought it would be a success?

A. Yes, sir. And I will go further then that—
Q. Were you going to say something further?
A. Yes, I never saw a druggist yet that liked spear-
1343 mint gum, while I was selling the other gum.
Mr. Offield: That is all your Honor.
Mr. Aldrich: That is all.

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P. J. CASSIDY called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Aldrich.*

Q. State your name to the Court, please.
A. P. J. Cassidy.
Q. Where do you reside?
A. 704 West 69th Street.
Q. What business are you engaged in?
A. Salesman.
Q. How long have you been in the gum business?
A. Well, about eight or nine years.
Q. Did you ever at any time work for William Wrigley Jr. & Company?
A. Yes, sir.
Q. In what year?
A. Oh, December, or early in January, 1903.
Q. And for how long did you continue to work for him?
A. Well, I continued until about November, 1908.
Q. And upon leaving in November, 1908, we have
1344 learned in the progress of this case that you got a letter of recommendation?
A. Yes, sir.
Q. From William Wrigley & Company?
A. Yes, sir.
Q. I hand you that letter and ask you who signed it?
(Counsel hands document to witness.)
A. Well, Mr. Patrick, the vice-president of the Company, was instructed by Mr. Wrigley to give me this letter. Mr. Patrick went into William Wrigley's Jr.'s private office. I bid him goodbye, left him in the fairest of terms, and this is the letter I received.
Q. Are you able to state to what stenographer it was dictated, by the initials, or do you know?

A. There is no initials, on this letter but the letter was dictated, to Agnes Shevlin, Mr. Wrigley's private stenographer.

Mr. Aldrich: The letter has before been identified and I will now read it, if the Court please.

The Court: We will consider it read.

Mr. Aldrich: Yes. Let it be marked Defendant's Exhibit

Defendant's Exhibit 9.

9. (Said document, so marked Defendant's Exhibit Number 9, is in the words and figures as follows, to wit:)

1345 (On letter head Wm. Wrigley Jr. and Co.)

Chicago, 9/15/08.

TO WHOM IT MAY CONCERN:

This certifies that Mr. P. J. Cassidy was employed by us as general salesman in the Southern Territory for several years, during which time he gave perfect satisfaction.

He quits our house of his own accord, being dissatisfied with the Southern territory.

Respectfully yours,
WM. WRIGLEY, JR. CO.

1346 Mr. Aldrich: Q. You worked there then from 1903 to 1908?

A. Yes, sir.

Q. Where, in what capacity, and how?

A. Well, I traveled in the southern states, about six or seven states in the South.

Q. Name the principal states.

A. Well, Georgia, Alabama, Florida, Mississippi, North and South Carolina, part of Tennessee.

Q. You may state whether or not during the period you were in the service of the Wrigley Company there was any spearmint gum sold, to your knowledge?

A. Well, there was very little spearmint gum offered for sale in my territory until the year that Mr. Wrigley had brought the campaign South, which was, as near as I can remember, in 1906. We gave a card to every retail druggist, retail grocer and retail confectioner in the territory and gave them a box of gum free in order to introduce it.

Q. Yes. Had you been engaged in selling any spearmint gum prior to 1906?

A. Yes, I think I sold a few boxes occasionally on drop shipments; included them, you know.

Q. And during that period you may state whether or not you met with the Pulver Gum?

A. Well, in my territory—I have seen the samples of Pulver Gum in Mr. Wrigley's desk, but in my territory I have seen very little Pulver Gum on the market.

1347 Q. You did see some, didn't you?

A. I can't remember of seeing any.

Q. Was it the Pulver Gum or Digesto Gum?

A. Well, I knew the Digesto Gum—samples in Mr. Wrigley's desk, but I have not seen it out on my territory.

Q. When did you first see the spearmint gum offered through the Red Books, or referred to in the Red Books?

A. I believe I remember that when I went to work for Wrigley in 1903. I believe I saw a cut of the spearmint gum but there was very little sold of it.

Q. And it appeared on their letter head during that period of 1903?

A. 1904, I believe the new letter head cut had.

Mr. Aldrich: That is all. Take the witness.

*Cross-Examination by Mr. Offield.*

Q. During all of the time you were in the employment of William Wrigley Jr. & Company, that is from 1903 to 1908 you knew of the Wrigley Spearmint Gum throughout that whole period, didn't you?

A. Yes, sir.

Q. Did you have the fifth edition of the Red Book, as one of the salesmen of the Wrigley Company?

A. I don't remember what edition—

1348 Q. Well, I hand you the fifth edition of this book, marked Complainant's Exhibit 18, and I will ask you to state if you had that book in 1903?

(Counsel hands exhibit to witness)

A. Yes, sir, probably that is the book.

Q. This is the book that you had?

A. I believe it is.

Q. How do you identify it as being the book that you had?

A. Just the cuts and this lamp in here (indicating) I remember that.

Q. You remember those premiums as being premiums you sold in 1903?

A. I recognize it, I believe, according to this lamp.

Q. And in that book, spearmint gum is shown, isn't it, as one of the brands of the Wrigley Company?

A. Yes, sir.

Q. So you are quite positive that in 1903, the first you knew of the Wrigley brands of gums, they had Spearmint at that time?

A. Yes, sir.

Q. Now where did you ever see any of Pulver's gum in the year 1903?

A. I think I seen Pulver's gum—I believe Mr. Wrigley has called my attention to it in his desk at the office.

Q. No, I mean outside of Mr. Wrigley's office. I
1349 mean out in the market.

A. I may have seen it on the territory but I can't just recall it.

Q. You can't remember where or when you saw it?

A. No sir.

Q. Was it in a green package?

A. No, sir, Pulver's Gum was a fac-simile to the Wrigley package.

Q. Did you ever see any Pulver's Teddy Bear Spermint Gum?

A. No, sir.

Q. Did you ever see any Pulver Gum in a spearmint package?

A. No, sir, I have seen just the Digesto Spearmint.

Q. Well, when was it that you think you saw some of this on Mr. Wrigley's desk?

A. Well, I commenced work for him in 1903, and I suppose it was during 1903 or '04.

Q. It might have been in 1905?

A. I could have been, yes, sir.

Q. Have you any way of fixing the date, whether it was in any particular month or year in 1903 to 1908?

A. I think it was the first month I went to work for Mr. Wrigley—

Q. But you are not positive on that point?

A. No, sir. That would be 1904, I mean.

Q. You are acquainted with Mr. Wrigley's signature, aren't you? That is you know his signature by sight?

A. Oh, yes.

1350 Q. Does that letter that has been shown you here bear Mr. Wrigley's signature?

A. Well, Mr. Wrigley had never written his signature. I always got stamped letters from Mr. Wrigley and when Mr Patrick brought me out the letter and I resigned from the company, or apparently was leaving the Company all in good

will, I folded the letter up and took it for granted it was Mr. Wrigley's signature.

Q. Yes, but I am asking you if that is Mr. Wrigley's signature on that letter?

A. I don't know.

Q. You don't know? As I understand it, you were not discharged from the Wrigley Company in 1908?

A. No, sir, I voluntarily resigned.

Mr. Offield: That is all.

Mr. Aldrich: That is all, Mr. Cassidy.

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OSCAR ST LOUIS, called as a witness on behalf of the Defendant, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Aldrich.*

Q. State your name to the Court, please.

A. Oscar St. Louis.

1351 Q. Where do you reside?

A. Chicago.

Q. What is your business?

A. Manufacturer's agent.

Q. In what line of goods?

A. Chewing gum and wrapping machinery.

Q. How long have you been connected with the chewing gum business?

A. Since 1906.

Q. And with what companies or persons?

A. With William Wrigley Jr. & Company.

Q. In what capacity were you employed by the William Wrigley Jr. & Company?

A. Salesman.

Q. And where were your activities in that line?

A. Mostly in North and South Carolina.

Q. You may state whether or not during the time you were a salesman for William Wrigley Jr. & Company you sold any spearmint gum and if so, when you commenced doing so?

A. Why they had spearmint gum in 1906, when I went with them.

Q. And what kind? How was it wrapped?

A. The first package I saw was wrapped in tin foil; five-sticks banded with a white band.

Q. And did you sell any of the gum, Spearmint Gum? Was it the gum that you were offering at the time to the trade?

A. Very little of it.

Q. And in what connection, in what way?

A. Most of it with premium drop shipments.

1352 Q. When did the advertising campaign commence, if you know?

A. If I recollect, Mr. Patrick told me it was started in the City of Buffalo early in 1906, I believe.

Q. 1906 or 1907?

A. I believe—I think it was in July, 1906, if I remember right.

Q. I think there are some letters here that will refresh your recollection on that subject, Mr. St. Louis. I hand you some letters addressed to you from the Wrigley Company and I think there is one there that refers to the campaign. (Counsel hands exhibit to witness)

A. That was written to me by Mr. Wrigley, dictated by Mr. Wrigley himself on the 6th day of June—I mean in the month of June, 24th of June, 1907, referring to Boston territory, but they had been advertising in Buffalo prior to this time.

Q. Yes, beginning in January, 1907, wasn't it, Mr. St. Louis?

A. I don't recall about the Buffalo campaign. I was not in that territory.

Mr. Aldrich: I offer in evidence, if the Court please, a letter to Mr. St. Louis, dated March 21st, 1907, and ask that it be marked Defendant's Exhibit 10.

Defendant's Exhibit 10.

(Said document, so marked Defendant's Exhibit Number 10, is in the words and figures as follows, towit:)

1353 (On letterhead of Wm. Wrigley Jr. and Co.)

JHP. A.S. Chicago, 3/21/07.

Mr. O. St. Louis,
c/o Gen. Del.,
Winston-Salem, N. C.

Dear Sir:

We are in receipt of your favor of the 18th inst., and note the very nice batch of orders, 26 Shares and 38 Jars.

Think you have now struck your gait and will keep on going.

Respectfully yours,
Wm. Wrigley Jr. & Co.

1354 Mr. Aldrich: Then I offer in evidence a letter dated June 24th, 1907, from Wrigley & Company to the witness, and ask that it be marked Defendant's Exhibit 11.

(Said document, so marked Defendant's Exhibit Number 11, and is in the words and figures as follows, towit:) Defendant's Exhibit 11.

1355 (On letterhead Wm. Wrigley Jr. and Co.)

Chicago, 6/24/07

W. W. Jr. A.S.
Mr. Oscar St. Louis,
c/o Gen. Del.,
Hot Springs, N. C.

Dear Sir:

We have yours of the 20th and 21st insts. Note that you want to come back to Chicago by Detroit. We do not know whether you have made up your mind to lay off until September 1st at your own expense.

If you prefer to work, think we can find something for you to do in New England until September 1st. We are advertising extensively there our Spearmint brand of Gum and we could possibly use you in the jobbing towns working the retail trade on jars and straight boxes without any premiums. There will be plenty to do there to keep your until September.

If you are going there, however, it will be necessary for you to go direct from where you are now to Boston and find Mr. Wm. T. Ziegler, #164 Milk St., c/o Tuetein Warehouse, who has charge of our New England business. It will also be necessary for you to wire us on receipt of this, if you are going to Boston, so that we can write you in care of Mr.
1356 Ziegler, giving you full instructions.

If you get there ahead of any instructions, go to work on the large down town retail trade of Boston city, under Mr. Ziegler until you hear from us.

Respectfully yours,
Wm Wrigley Jr & Co

Dectated by W. W. Jr.
But Not Read.

1357 Mr. Aldrich: Then I offer in evidence a letter dated November 9th, 1907, addressed to the witness and signed by William Wrigley Jr. & Company, and ask that it be marked Defendant's Exhibit 12.

(Said document, so marked Defendant's Exhibit Number 12, is in the words and figures following, towit—)

Defendant's Exhibit 12.

1358 (On letterhead Wm. Wrigley Jr. and Co.)

Chicago, 11/9/07.

Mr. O. St. Louis,
c/o Charleston Hotel,
Charleston, S. C.

Dear Sir:—

Owing to the present financial stringency, we are compelled to lay off all our traveling men. I seems worse than useless to try to sell any goods just at present.

We are daily receiving letters from the jobbers stating that it is impossible for them to pay for goods already purchased, let alone any that is to be sold to them in the future. Therefore, we have decided to lay off our men, as stated above.

We will pay your salary up to the 15th of this month and in all probability, will start you again January 1st. If things look at all bright, we will add the balance of this year's salary on to next year's.

Kindly let us have an answer to this as soon as possible.

Respectfully yours,
Wm Wrigley Jr & Co.

1359 Mr. Aldrich: Then I offer in evidence a letter dated February 25th, 1908, addressed to the witness and signed by Wrigley & Company, and ask that it be marked Defendant's Exhibit 13.

Defendant's Exhibit 13.

(Said document, so marked Defendant's Exhibit Number 13, is in the words and figures following, towit:)

1360 (On letterhead Wm. Wrigley Jr. and Co.)

Chicago, 2/25/08

W.W.Jr. A.S.
Mr. O. St. Louis,
c/o Gen. Del.,
Monroe, N. C.

Dear Sir:—

We have yours of the 22nd inst., and are glad to note you propose to paint "23" on the backs of the old competitors in your territory.

We are certainly sending out a big bunch of cards in North and South Carolina and some of these days we will have to get some real business from those states to make us square.

Respectfully yours,
Wm. Wrigley Jr & Co

Dictated by W. W. Jr.
But Not Read.

1361 Mr. Aldrich: Mr. St. Louis, when did you ever, if at all, see the Digesto Spearmint Gum?

A. I don't recall of seeing Digesto at all after I left the Wrigley Company. That was in 1908.

Mr. Aldrich: You may take the witness. Oh, just one question.

Q. Were you discharged by the Wrigley Company?

A. Why, I came in from a point in Virginia on my way to New York City and I met Mr. Wrigley in the New York office in April, 1908. He asked me where I was going—

The Court: Just answer the question. Were you discharged?

Mr. Aldrich: Q. Were you discharged by the Wrigley Company?

A. No, sir.

*Cross-Examination by Mr. Offield.*

Q. What business are you engaged in?

A. Manufacturer's agent.

Q. Handling chewing gum?

A. Yes, sir.

Q. How long have you handled it?

A. Since 1906. I have been in the gum business since then.

Q. What brands of spearmint gum besides Wrigley's Gum, if you handled that, have you handled since 1906?

1362 A. Spearmint flavored gum?

Q. Yes.

A. Well, made by the Mansfield Company of Newark, New Jersey, and the United Pepsin Gum Factory of Newark, and L. P. Larson Jr. Company.

Q. Are you handling L. P. Larson Jr. Company's gum at the present time?

A. I am, sir, in some cases.

Q. Is that all the spearmint gum you have handled?

A. Yes, sir.

Q. You handled Percy Short's at one time, didn't you?

A. Yes, I bought some outright.

Q. Did you continue selling it?

A. No, sir.

Q. Why not?

Mr. Aldrich: Object to that, if the Court please.

The Court: I don't see the materiality of it.

Mr. Offield: The only possible point of materiality, your

Honor, to the question is that this witness has handled a good many different spearmint imitations.

The Court: What has that got to do with this case?

Mr. Offield: Nothing, except it could reflect a little on his credibility, showing it is to his interest to handle these imitations.

The Court: Oh, I don't think so. I don't think that is material.

Mr. Offield: Well, that is all.

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1363 JAMES McNAMARA, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Aldrich.*

Q. What is your name?

A. James McNamara.

Q. What is your business?

A. Secret Service business.

Q. Were you employed some time in 1911 to investigate the statement of Gerald Hayes, with reference to confusion as between Spearmint and Peptomint?

A. I was.

Q. Did you see Gerald Hayes on that occasion and, if so where and when?

A. I did on the 5th of November, 1911.

Q. And where did you see him?

A. At his house, at his flat.

Q. And you may state to the Court what the conversation was?

A. Well, I went there, of course, to get information. He told me that he had been selling gum through the loop, as he put it. And I asked him what kind, and so forth, what the demand was for and he said he sold any kind they asked for.

The Court: A little louder, please.

A. If they wanted Spearmint, why, he furnished them that and if they wanted Peptomint, they got that. But he furnished them nothing only what they asked for. There
1364 was only one or two cases I think he said they asked for anything else outside the two.

Mr. Aldrich: Q. What, if anything, did he say about get-

ting at any time Peptomint when he had asked for Spearmint? Did he say he did or did not?

A. Never did.

Q. What, if anything, did you say to him as to having signed an affidavit that he had gotten Peptomint?

A. Yes, he said he signed an affidavit, but he hadn't read the affidavit. He had no idea what was in the affidavit.

Mr. Aldrich: That is all. Take the witness.

*Cross-Examination by Mr. Offield.*

Q. What is your business?

A. Secret Service business.

Q. With what company are you connected?

A. Thiel Detective Service Company.

Q. When did you first see Gerald Hayes?

A. On that same day, on the 5th of November, 1911.

Q. Where?

A. At his flat of house.

The Court: Who is Gerald Hayes? This is the first time I ever heard his name.

Mr. Aldrich: Gerald Hayes is a man whose affidavit 1365 was filed at the time the injunction was applied for and he testified he went to Adams Street, in the Independent Drug Store here, and asked for Spearmint and got Peptomint.

The Court: Oh, yes. Go ahead.

Mr. Offield: Q. You went to the apartment of Gerald Hayes on this day you have mentioned?

A. Where he lived, yes.

Q. Who did you see there?

A. Saw him.

Q. Anybody else?

A. I don't remember now whether I say anybody else or not.

Q. You don't remember meeting Mrs. Hayes?

A. No, I think not. I think though Mrs. Hayes came to the door.

Q. What did she say to You.

A. Oh, it is too long ago for me to remember that.

Q. You don't remember that Mrs. Hayes told you that Gerald Hayes wasn't home?

A. No.

Q. And Gerald Hayes was in the house at that time, was he?

A. He was right there. I saw him and talked to him.
Q. Inside the door?
A. Yes.
Q. What did you say to him?
A. I told you what I said.
Q. What did you say to him? Please repeat the conversation.
A. What was it?
Q. Please repeat the conversation. What did you say to him.

A. I asked him whether he had been selling gum
1366 through the loop and he told me he had, and this conversation that I have repeated here he gave to me at that time.

Q. You asked him if he had purchased Peptomint Gum thinking it was Spearmint, did you?
A. I don't remember—oh, no, no. I asked him the gum he had been selling and he told me.
Q. Did he say he was selling Spearmint Gum or Peptomint Gum?
A. Both.
Q. He said he was selling both, did he?
A. Yes, but he said they had no call for Peptomint. It was all Spearmint.
Q. Well, what was your object in going to the house of Gerald Hayes.
A. To get the information.
Q. To get what information?
A. To get the information I have been relating; to find out what he had been doing; find out what gum he had been selling; find out about his affidavit.
Q. You had a copy of his affidavit, didn't you?
A. I haven't a copy of his affidavit.
Q. You had at that time?
A. I don't remember.
Q. You knew what he had sworn to, didn't you?
A. I knew what he had sworn to.
Q. And you went there to disprove what he had sworn to in his affidavit?
A. I went to find out all about what he had been doing, about the affidavit and so forth, and as I told you, that he
1367 said he signed the affidavit without reading it at all but they paid him—Shall I go on?
Q. Certainly, go on.

A. They paid him for the affidavit and for his service.
Q. Who paid him?
A. Why, the Wrigley people.
Q. Did he tell you that?
A. Yes.
Q. They paid him personally?
A. That is the way he put it; he didn't care what was in the affidavit.
The Court: Q. He didn't care what?
A. He didn't seem to care what was in the affidavit. He said he didn't read it.
Mr. Offield: Q. How old a boy is Gerald Hayes?
A. Why, I don't know how old he is. This is since 1905,—I don't know.
Q. I say, how old a boy is he.
The Court: Q. How old is he?
A. I understand, but I am mixed up in so many cases I can't remember his age.
The Court: You can say you don't remember and we will get along faster.
A. Well, I don't know.
The Court: When you don't know, the best answer is to say you don't know.
A. Well, I say that.
The Court: All right.
1368 Mr. Offield: That is all, your Honor.
Mr. Aldrich: That is all.
The Court: Call your next witness.

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JOHN J. COCHRANE, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

*Direct examination by Mr. Aldrich.*

Q. Mr. Cochrane, what is your name?
A. John Joseph Cochrane.
Q. Where do you reside?
A. Chicago, Illinois.
Q. And were you ever connected with the Wrigley Company?
A. From 1892 to 1903.
Q. And where was Wrigley's business situated in 1892, when you commenced?

A. 157 East Kinzie Street.

Q. And what was the nature of the business in which he was then engaged?

A. Baking powder and cook books, premium baking powder, Spar Baking Powder, in 1892.

Q. And when, if at all, if you know, was the connected with the soap business?

A. In 1892, soap in conjunction with the baking powder, or baking powder in conjunction with soap.

1369 Q. And when did he commence to manufacture chewing gum?

A. The World's Fair year, about 1893.

Q. And what brands of chewing gum did he manufacture first?

A. The only brand we had then was Vassar. We put it out with a lamp premium.

Q. And then what was your next brand?

A. Juicy Fruit.

Q. Was there any other gum bearing the same or like dress in the market at that time?

A. Yes, we had a Lotto and Youcanchew and Vassar at that period.

Q. Well, I am not asking you that, but was asking you if any other manufacturer was putting out a brand that was dressed like your Juicy Fruit and if so, who does?

A. Yes, there was a Primley California Fruit, which was a large seller in Texas and Mr. Inglesbert at that time told us it was a large seller and we duplicated with a Juicy Fruit package.

Mr. Offield: I object to that question.

The Court: It is too late. He has answered.

Mr. Offield: Well, I object to the answer then.

The Court: I don't' think it is material or relevant but it is too late.

Mr. Aldrich: Q. How long did you remain at 157 East Kinzie Street?

A. 1892 and '93

1370 Q. And then where did you remove to?

A. Moved to 85 and 87 Kinzie Street.

Q. And how long were you there?

A. Upwards of a year.

Q. And then where did you move to?

A. Newberry Warehouse at Franklin and Kinzie Streets.

Q. What had happened, a fire or explosion?

A. 85 and 87 Kinzie Street, in January, there was an explosion, natural gas.
Q. And that necessitated your moving, did it?
A. Yes sir.
Q. And from Newberry's Warehouse where did you go?
A. 50 and 52 Michigan Street.
Q. And how long were you there?
A. Part of '95, '96 and '97.
Q. And then where did you go?
A. 117 and 119 East Kinzie Street.
Q. And how long were you there?
A. '88, '90, 1900—
Q. You mean 1898, don't you?
A. What?
Q. You mean '98 don't you?
A. 1898, 1899, 1900, and April of 1900 removed from there.
Q. Where did you go then.
A. 88 and 90 Michigan Avenue.
Q. Now, you may state what were your duties with the William Wrigley Jr. Company during that period?

A. Well, I served in all capacities. I might term it
1371 this, from truck horse to general manager. I served as wagon driver, packer, shipper, bookkeeper, auditor, sales manager and latterly general manager.

Q. And you were doing the more humble duties when the business was very small?
A. Absootely.
Q. At what time was Mr. Scatchard connected with William Wrigley Jr. & Company?
A. I think Mr. Scatchard was connected with William Wrigley Jr. from 1892 to 1897, to the best of my knowledge and believe.
Q. Now, at the time Mr. Sctachard left there, or before that time and up to the time you left William Wrigley Jr. & Company in 1903, what were your duties?
A. 1903?
Q. Yes.
A. General manager.
Q. Was Mr. Wrigley at any time engaged in the sale of gum on the road?
A. Yes, he made trips.
Q. And did Mr. Scatchard also before he left there, go on the road?
A. Mr. Scatchard also made traveling trips.

Q. And you may state, if you know when William Wrigley Jr & Company began the sale of Spearmint Gum?

A. We were experimenting with Spearmint Gum in the year 1902.

Q. And you may state whether or not William Wrigley Jr. & Company had sold any Spearmint Gum prior to 1902?

1372 A. Not to my knowledge.

Q. What did you do in 1902 and from that time to the time you left the service of the company, with reference to spearmint gum?

A. What did we do?

Q. Yes.

A. Why, we had an advertising campaign in those days on Juicy Fruit, 1902. Spearmint was only an experimental issue with us, so to speak. Sometimes it would be too strong and sometimes it would be too weak.

Q. And you may state whether or not you had, prior to your leaving William Wrigley Jr. & Company, whether or not you had any knowledge of a gum manufactured at Rochester, New York, known as the Digesto Spearmint Gum?

A. Well, I have seen both the Pulver package the the Digesto

Q. You have?

A. Yes. I saw the Pulver package in 1895. I saw the Digesto package in 1902. In fact, various other brands, as far as that is concerned.

Q. Now, you may state whether or not the Digesto brand you saw was a spearmint package or whether it was some other flavor.

A. No, it was Digesto Spearmint over there. It says, "Its flavor wins favor", or something like that, on the label.

Q. You may state whether the Pulver package was spearmint or some other flavor.

1373 A. The Pulver package was a package of five individual sticks wrapped—

The Court: Well, you were not asked that.

A. Sir?

The Court: Your were not asked that.

Mr. Aldrich: Q. I just asked you whether it was spearmint or some other flavor?

A. Spearmint, yes, sir, spearmint.

Mr. Aldrich: You may take the witness.

*Cross-Examination by Mr. Offield.*

Q. In what business are you now engaged?
A. I am an auditor.
Q. With what company?
A. Different clients throughout the city.
Q. You are doing business for yourself as an individual?
A. Yes, sir.
Q. Where do you live, in Chicago?
A. 747 North Clark Street.
Q. Now, when did the first Wrigley Red Book come out?
A. Maybe 1900 and 1901, to the best of my knowledge.
Q. That is the first book that you saw published?
A. I believe so.
Q. You were familiar with those books, were you?
1374 A. I compiled some of them.
Q. I show you Wrigley's Fifth Edition, and ask you to state if you have any recollection of when that book was first published.
(Counsel hands book to witness)
A. No, sir, I couldn't tell you. It is an old book.
Q. You don't know whether it was published—
A. I know it was published in my time but what year I couldn't state.
Q. Well, was it published in 1903?
The Court: He said he couldn't state.
A. I said I couldn't state.
Mr. Offield: Q. Well, you can't state whether it was published in 1895 or 1905?
A. No, there was no Red Books issued in 1900.
Q. No Red Books issued in 1900 of any character?
A. No, sir.
Q. So that you know that was issued after 1900?
A. Yes, sir I do.
Q. But you don't know whether it was 1902 or 1905?
A. No, sir, I don't.
Mr. Offield: The Red Book shown the witness was Complainant's Exhibit Number 18.
Q. I show you a supplemental edition of Wrigley's Red Book, identified as Complainant's Exhibit Number 17,
1375 and ask you to state, if you know, when this book was published by the Wrigley Company?
(Counsel hands book to the witness)
A. I can't recollect the fact at all.

Q. Well, you have no recollection about it then?
A. I can't recollect the fact at all.
Q. Now, were you ever in the gum business for yourself.
A. I was.
Q. When?
A. 1904.
Q. For how long a period?
A. Upwards of a year.
Q. Now, in 1902, you said that the Wrigley Company for the first time made certain experimental batches?
A. Yes, sir.
Q. Did you see those experimental batches made?
A. No, sir, I had nothing to do with the factory end at all.
Q. How do you know they made emperimental batches then?
A. Because they were billed in to us at that period.
Q. Billed in as what?
A. A quantity of gum, gum coming in as Spearmint.
Q. Billed in as Spearmint after that period, was it?
A. Yes, sir.
Q. Were you familiar with all gums put out by William Wrigley Jr. & Company, gum products?
1376 A. In my connection, yes, sir.
Q. Were you familiar with all the products of 1899?
A. Yes, sir.
Q. Did they have that year a premium consisting of a dater?
A. I don't think so, but you mean a little dater?
Q. A little dater?
A. Yes, sir.
Q. I show you premium offer Number 300, and identified on this slip, and ask you if you remember that dater they had in 1899.
A. No, sir.
Q. You have no recollection of that?
A. No, sir, I have no recollection of that but I remember—
Q. I didn't ask you about that. I asked you if you remember the dater they had in 1899?
A. Yes, sir, with another product of gum.
Q. What other product?
A. It may have been Vassar or it may have been Wrigley's Pepsin, but not with Wrigley's Spearmint. I am not familiar with these at all (indicating).

Q. I didn't ask you that. I ask you if you had this dater in 1899?

A. We had daters, yes. Daters might run along for two or three years and adapt them.

Q. Well, now, you recall a dater?

A. They had a dater as a premium.

Q. Now, do you know with what particular brand of
1377 chewing gum that dater was given away?

A. No, sir, I don't no.

1378 Q. How much gum was made in 1902 that you recollect that came over from the Zeno Company of spearmint flavor?

A. Well, the first two or three batches that came in, then there was no bill at all only a memorandum invoice.

Q. But how much gum was there in those batches?

A. I couldn't tell you, the quantity was so insignificant I couldn't tell you.

Q. Was that gum that came up wrapped, did it have a label on it.

A. Five sticks bundled together, wrapped in foil, and a wrapper around it with Spearmint Gum thereon.

Q. I show you a package of gum offered in evidence as Complainant's Exhibit No. 1, and ask you to state whether that is your first recollection of the package of Spearmint that came over to the Wrigley Company from the Zeno Company in 1902.

A. Yes, that looks to me like the package.

Q. Now, prior to 1902 you had never seen that package in connection with the business of the Wrigley Company?

A. No, sir.

Q. You were in a position to have seen it if it was there?

A. Yes, sir.

Q. You were in the packing rooms?

A. Yes, sir.

Q. You saw the gum, all the gum that came over from the Zeno Company?

1379 A. All over the house, from the ceiling to the roof.

Q. And you wrapped part of it?

A. Not in 1902.

Q. Did you in 1901?

A. No. I did in 1892,—1893, I should say.

Q. When did you stop packing gum?

A. As I advanced up from my station.

Q. What year did you stop packing?

A. I stopped packing gum, I guess, in 1893 or 1894,—in 1893.

Q. Then what were your duties?

A. Well, I drove the wagon, as I said before, and I have kept books.

Q. How long did you drive the wagon?

A. Oh, I guess three of four months or more.

Q. Then what was your next duty?

A. Shipper.

The Court: Why so much detail?

Mr. Offield: Here is a man, your Honor, that was an employe of this company from 1892 to 1903.

The Court: Yes.

Mr. Offield: He said that he never saw Spearmint Gum. It is against the testimony of every witness that I have put on the stand.

The Court: Don't argue with the witness, argue to the Court.

Mr. Offield: It seems to me that I am entitled to ask this witness.

1380 The Court: Yes. Well, go ahead I want to get through some time, that is all.

Mr. Offield: Q. What were your duties, your successive duties, just let me have them as you advanced from stage to stage.

A. Well, I stated that. I drove the wagon, I was shipping clerk, I was bookkeeper, I was auditor.

The Court: He went into all that once. Why have him repeat it?

The Witness: I have stated that.

Mr. Offield: Q. And in 1901, what were your duties.

A. General manager.

Q. Where did you see Pulver's Di-Gesto gum in 1895,—or Pulver's gum in 1895?

A. The first package at 85 and 87 Kinzie Street.

Q. That is where abouts at that place of business?

A. That was 85 and 87 East Kinzie.

Q. No, I mean where was the package at that time, in whose office?

A. Mr. Wrigley's office; in our office.

Q. Where did you see the Di-Gesto package in 1902?

A. 88 and 90 Michigan Avenue.

Q. And where did you see that Di-Gesto package at that time, whose office?

A. The private office of William Wrigley, Jr.
1381 Q. Were you discharged from William Wrigley Jr & Company?
A. No, sir.
Q. You left voluntarily?
A. Yes, sir.
Mr. Offield: That is all your Honor.
Mr. Aldrich: Just one question, Mr. Cochran. In addition to your salary you may state whether at any time you had an interest in the profits.
A. Five percent of the net profits.
Mr. Aldrich: That is all.
Mr. Offield: Q. For how long a period was that arrangement?
The Court: What difference does that make? If you object I will sustain the objection to the question.
Mr. Offield: I withdraw the question, your Honor.
The Court: Stand aside.

GARY S. TROY called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Aldrich.*

Q. What is your name?
A. Gary S. Troy.
Q. Where do you reside?
A. 5227 Quincy Street.
Q. How long have you lived in Chicago?
1382 The Court: Oh, about how long?
A. About twenty-seven years.
Mr. Aldrich: Q. And were you at any time connected with the Zeno Manufacturing Company? If so, in what year and in what capacity?
A. In 1903, in the shipping room; from 1907 as road salesman.
Q. How long were you in the shipping room?
A. About nine months.
Q. And then what did you do?
A. Then I went out redeeming coupons.
Q. And in that capacity you were brought into connection with the gum trade?
A. Yes, sir.

Q. You may state whether or not the Zeno Manufacturing Company was during the time of your service in the shipping room manufacturing any Spearmint gum for the William Wrigley Jr. Company.

A. They were not, no, sir.

Q. When, if you know, did they begin to manufacture Spearmint gum for him.

A. It was in 1906, in the summer, the first time that I saw Spearmint gum in the Zeno Manufacturing Company was when I tasted it, Mr. Disson, Mr. Dixon, the man who died in 1913, and myself; Mr. Smith was general manager there and he called us to his desk one day and asked us to taste the three different flavors, which is the medium, the
1383 mild and the strong. And Mr. Dixon—

The Court: Now, this is very interesting but it is not an answer to any question.

Mr. Aldrich: Well, then, just stop.

Q. That was in 1906?

A. 1906, yes, sir.

Mr. Aldrich: You may take the witness.

*Cross-Examination by Mr. Offield.*

Q. You were in the shipping room in 1903?

A. Yes, sir.

Q. Of the Zeno Company?

A. Yes, sir.

Q. Did they make chewing gum in the shipping room?

A. No, sir; they did on the fourth floor.

Q. But your duties were not on the fourth floor, they were in the shipping room?

A. My duties were going up to the fourth floor, loading the trucks, bringing them downstairs, making it into packages, giving them to Miss Adams, get a bill and pack them and sent them right away to the Wrigley Company.

Q. Was this all for the Wrigley Company or was it all Zeno Products?

A. This all went to the Wrigley Company.

Q. This all went to the Wrigley Company?

A. Yes, sir.

Q. Did you see the gum in these trucks when the gum was brought down from the fourth floor?

1384 A. Yes, sir: I loaded the trucks full of crates. We had crates that held so many boxes to a crate. We would

load them on to a five wheeled truck, take them downstairs and load them on a big truck.

Q. What were the flavors of gum in 1903 made for the Wrigley Company?

A. Juicy Fruit, Sweet Sixteen and Vassar.

Q. Those are all the flavors the Zeno Company was making for the Wrigley Company in 1903?

A. Yes, sir.

Q. Did they ship any boxes of assorted flavors to the Wrigley Company in 1903?

A. Not unless we were shy of filling up a crate, and where we would have a certain load, a certain number of cases of Juicy Fruit, we would fill up the crate with Sweet Sixteen.

Q. And those were the only flavors ever used when assorted boxes were made up?

A. Yes, sir, in my time.

Q. That is also true of 1904?

A. In the spring, practically in the summer of 1904, I started redeeming coupons and it took me out of the shipping department.

Q. So that from 1904 to 1907 you were not familiar with what gums the Zeno Company were manufacturing?

A. No, sir.

Mr. Offield: That is all your Honor.

Mr. Aldrich: That is all.

1385 JOSEPH H CONSTANTINE, called as a witness on behalf of defendants, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Aldrich.*

Q. What is your name?

A. Joseph H. Constantine.

Q. Where do you reside.

A. Chicago, Illinois.

Q. What is your business?

A. Food inspector, Department of Health.

Q. Connected with the city government?

A. Yes, sir.

Q. Were you at any time in the service of the Zeno Manufacturing Company?

A. For a short period, about six months.

Q. What period was that?

A. June, 1904, to December 31, or about the first week in January, 1905.

Q. What were your duties there?

A. Why, I assisted the foreman on the fifth floor where the gum was wrapped; worked mostly at night, took care of their wrapping machines.

Q. Kept the wrapping machines cleaned up and in shape; is that what you mean?

A. Yes, sir.

Q. You may state whether or not during the period that you were there you were able to know whether or not the Zeno Company was making Spearmint Gum for the William Wrigley, Jr. Company.

A. I never saw of it nor heard of it.

1386 Q. Never saw or heard of any?

A. No, sir.

Mr. Aldrich: Take the witness.

*Cross-Examination by Mr. Offield.*

Q. In the course of your business would you have seen Spearmint gum in the factory if it had been there?

A. If it had been on the fifth floor of the factory I would have seen it.

Q. If it had been on any other floor you wouldn't have seen it?

A. I had no business on any other floor.

Q. What was your business on the fifth floor?

A. Taking care of the machinery.

Q. That was all done at night, after the machines had stopped?

A. Yes, sir.

Mr. Offield: That is all, your Honor.

JOSEPH P. DILLON, called as a witness on behalf of defendants, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Aldrich.*

Q. Mr. Dillon, what is your name?

A. Joseph P. Dillon

1387 Q. Where do you reside?

A. Morris, Illinois.

Q. Were you formerly a citizen of Chicago?
A. Yes, sir.
Q. And with what company were you connected in connection with the gum trade?
A. I was connected with the William Wrigley, Jr. Company.
Q. What were you doing in connection with that company?
A. Why, in the shipping room.
Q. And during what years, what period?
A. From 1895 to 1899.
Q. You may state whether or not during the period you were employed by the William Wrigley, Jr. Company they were making or selling any Spearmint gum.
A. No, sir.
Mr. Aldrich: Take the witness.

*Cross-Examination by Mr. Offield.*

Q. You state that you were employed in the shipping room of the William Wrigley, Jr. Company?
A. Yes, sir.
Q. What were your duties there?
A. Why, assisting to pack, assisting to mark and load.
Q. Did you have a duty as shipping clerk?
A. At one time when Mr. Sherwin was away.
Q. How long were you in the shipping room?
A. In the shipping room?
1388 Q. Yes.
A. About three years.
Q. How long were you engaged as traffic man?
A. Oh, about a year, I guess.
Q. What year was that?
A. I think the latter part of 1898 and early in 1899.
Q. What gums, chewing gums, did you have any connection with in the shipping room of William Wrigley, Jr. Company in 1895?
A. To the best of my recollection, Juicy Fruit, Juicy Fruit in single packages, Pepsin, Peptomint, Pineapple, Orange and Banana.
Q. Those are all?
A. That is all I can remember of.
Q. Did that same list of flavors apply also to 1896?
A. From 1895 to 1899.
Q. Those are all the flavors you had anything to do with?

A. Yes, sir.
Q. Did you actually pack the gum yourself?
A. Helped to.
Q. Were they in packages or boxes?
A. They were in boxes; yes, sir.
Q. Could you see the gum inside the boxes, or just see the outside of the boxes?
A. You could see the gum inside the boxes, also the outside.
Q. By taking the covers off you could see inside?
A. Yes.
Q. The names of the gum was printed on the outside
1389 of the boxes?
A. Yes, sir.
Q. Were there any boxes of assorted flavors in those packages you used to ship?
A. Well, we used to put an assortment in a box, if that is what you mean.
Q. Did you make that assortment yourself, or was it made before it came there?
A. Made for an order,
Q. Was it made at the factory of the William Wrigley, Jr. Company?
A. Well, it was made by the Zeno people for the William Wrigley, Jr. Company.
Q. They made the assortment?
A. Yes, they made the assorted gum and we packed it in cases and shipped it that way.
Q. What business are you now engaged in?
A. I am employed as shipping clerk for the Coleman Hardware Company.
Q. Were you discharged from the employ of the William Wrigley, Jr. Company?
A. I think he let me out, yes, sir.
Mr. Offield: That is all.

JOHN T. HACKETT, called as a witness on behalf of defendants, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Aldrich.*

Q. What is your name?
A. John T. Hackett.
Q. Where do you reside?

A. Chicago.
1390 Q. What business are you engaged in?
A. I am a salesman.
Q. Were you ever connected with the William Wrigley, Jr. Company?
A. Yes, sir.
Q. For how long?
A. Oh, a very short while; possibly for two months.
Q. What year was that?
A. What year?
Q. Yes.
A. The early part of 1897.
Q. And what were your duties in connection with that company?
A. Well, I was stenographer and clerk.
Q. For whom, whose dictation did you take?
A. Mr. Canary's and Mr. Cochran's.
Q. And what was Mr. Canary?
A. I don't remember what his title was or if he had any.
Q. And you may state whether or not they were selling, Wrigley & Company, were selling Spearmint gum at the time you were with them.
A. I don't know that they were.
Q. Well, do you know whether they were or not, that is the point;
A. They were not.
Mr. Aldrich: That is all. Take the witness.

*Cross-Examination by Mr. Offield.*

Q. What gums was the Wrigley Company dealing in 1897?
1391 A. I only remember one, Juicy Fruit.
Q. By whom are you now employed?
A. Charles E. Hires Company.
Mr. Offield: That is all, your Honor.

WILLIAM E. SCHRADER, called as a witness on behalf of defendants, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Aldrich.*

Q. State your name.
A. William E. Schrader.
Q. Where do you reside?
A. Chicago, 829 La Fayette Parkway.
Q. What is your business?
A. Paints. Wholesale paints.
Q. Have you ever been connected with the gum business in any way?
A. Not directly.
Q. What connection, if any, did you have with the Zeno Company?
A. I was employed by the parent house, the Rubber Paint Company.
Q. The Rubber Paint Company. And was their business conducted from the same building and offices?
A. Yes, sir.
Q. The gum business, if I understand, was conducted in the name of the Zeno Company?
A. Zeno Manufacturing Company.
Q. But you were in the other branch of the business?
1392 A. In the paint department.
Q. How long were you with the Zeno Company,—no, the Rubber Paint Company?
A. A little over twenty-seven years.
Q. Where were they when you first went with them?
A. At the corner of Market and Quincy Streets.
Q. That was when they first came here from Toledo, wasn't it, or Cleveland?
A. They had been here some years before I entered their employ.
Q. And then from there where did they move?
A. Over on the West side, in a building extending from West Van Buren Street to Boston Avenue.
Q. Is that the building that was destroyed by fire on the last day of December?
A. No, sir.
Q. They moved from there to some other place then?
A. In addition to this building they rented another build-

ing on the south side of West Van Buren Street, that is the one that was destroyed by fire.

Q. On December 31, 1904?

A. On the last day of 1904.

Q. You may state whether or not the books of the company were destroyed by that fire or whether they were just damaged by water.

A. They were damaged by water.

Q. Not destroyed?

A. Not destroyed, no.

Q. During the period that you were with them you may state whether or not they manufactured Spearmint
1393 gum—the Zeno Manufacturing Company manufactured Spearmint gum for the William Wrigley, Jr. Company, and if so, when first that you know of.

A. I never heard that name while I was in their employ.

Q. When did you leave their employ?

A. July 10, 1907.

Mr. Aldrich: That is all. Take the witness.

*Cross-Examination by Mr. Offield.*

Q. You were never in the employ of the Zeno Manufacturing Company, were you?

A. I was in the employ of the parent house, The Rubber Paint Company.

Q. The Rubber Paint Company was engaged in the manufacture of paints, were they not?

A. Engaged in the manufacture of paints, also chewing gum.

Q. Did you have anything to do with the chewing gum department?

A. Very little.

Q. Anything at all?

A. In fact, you may say nothing.

Mr. Offield: That is all, your Honor.

Mr. Aldrich: That is all.

1394 JABEZ GORHAM, called as a witness on behalf of defendants, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Aldrich.*

Q. What is your name?
A. Jabez Gorham.
Q. Where do you reside?
A. Lombard, Illinois.
Q. You may state whether or not you have ever been connected in any way with William Wrigley Jr. Company.
A. Yes, sir.
Q. At what time?
A. In the year 1895 to 1900.
Q. And during what period of that time were you in the City of Chicago?
A. I traveled out of Chicago only a few months, two or three months.
Q. Yes, and then where did you go?
A. Then I was transferred to the Philadelphia branch.
Q. How long were you with the Philadelphia branch?
A. Until 1900.
Q. I have been informed that you at one time were the representative of Mr. Wrigley's interests in London.
A. Yes, sir.
Q. And during the period that you were with William Wrigley, Jr. & Company you were either at Chicago or
1395 Philadelphia you may state whether or not they were selling Spearmint gum.
A. Not to my knowledge.
Mr. Aldrich: You may take the witness.

*Cross-Examination by Mr. Offield.*

Q. What did you say your duties were between 1895 and 1900 with the Wrigley Company.
A. I was salesman for the branch office.
Mr. Aldrich: Will you permit me to ask another question that I didn't think of?
Mr. Offield: Certainly.
Mr. Aldrich: Q. What time was Mr. Scatchard with William Wrigley, Jr. Company?

A. He was there from 1895 to 1899 or 1900.
Q. That is, at the Philadelphia office?
A. Yes, sir.
Q. But what time was he with them in Chicago, if you know?
A. I do not know, because I understood he had just been taken to the Philadelphia branch the year before.
Mr. Aldrich: Go ahead, Mr. Offield.
Mr. Offield: Q. In 1895 what were your duties?
A. Salesman.
Q. What territory were you covering as salesman?
A. For the first three months, or when I was trans-
1396 ferred later on, do you mean?
Q. No, I mean for the entire time. In the year 1895 what territory did you cover?
A. The first three months I traveled in Illinois, Wisconsin and Michigan selling soap.
Q. Just selling soap and nothing else?
A. Yes.
Q. Did you ever sell chewing gum?
A. Yes, sir.
Q. What year did you begin selling chewing gum?
A. 1895.
Q. What part of the year?
A. It was about December—November and December, 1894, that I commenced to sell soap, and along about January or so, 1895, I was transferred to Philadelphia.
Q. Did you sell Zeno Chewing Gum at the same time you sold Wrigley's Chewing Gum?
A. Sir?
Q. Did you sell Zeno Chewing Gum at the same time you sold Wrigley's Chewing Gum?
The Court: Answer,
A. Not at the same time I sold Wrigley's chewing gum, no, sir; not under their brand.
Q. Did you at any time handle the Zeno brand of chewing gum?
A. Yes, I did for a few months; yes, sir.
Q. Now, when you were salesman for the Wrigley Company, any time prior to 1900, did they have a red book that the salesmen carried?
A. Prior to 1900?
Q. Yes.

A. I think the last year I was with them that they
1397 had a red book that I remember.

Q. That was the last year, during 1900?

A. I should judge, I don't know exactly the year it was gotten out at all. I remember only one red book that I ever saw that they carried.

Q. I show you a red book marked Salesmen's Edition of Wrigley's Red Book and ask you to state if that book was called to your attention in 1899.

A. That is the only red book that I — when I was with them that I remember. I remember that red book. I remember the lamp.

Q. The same lamp is in the Fifth Edition, Complainant's Exhibit 18, do you remember that?

A. Is that a Dewey Machine in that book? They had a Dewey machine.

Q. Please examine this book and state whether this book was in your possession at the time you were a salesman in 1900 or 1901.

A. No, sir.

Q. And you state that you did not have this red book in your possession, by what fact?

A. It seems to me that very fact there.

Q. That the premium of No. 193, you don't recall?

A. Don't recall that; we had a Dewey machine.

Q. Is this the machine?

A. Yes, there is two in there.

Q. You remember those machines?

A. I remember those machines.

1398 Q. You remember those machines?

A. I remember those machines.

Q. Well, now, in view of that fact, do you think this book was in your possession in the early '90's?

A. No, I do not.

Q. But you think that was the first book in 1899 that you saw.

A. No, it didn't have that kind of a cover; it had a red paper cover, as I remember it.

Mr. Offield: That is all, your Honor.

Mr. Aldrich: That is all.

HENRY ENGEL, called as a witness on behalf of defendants, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Aldrich.*

Q. What is your name?
A. Henry Engel.
Q. Where do you reside?
A. Chicago.
Q. How long have you resided in Chicago?
A. Thirty-eight years.
Q. What business are you engaged in now?
A. Liquor business.
1399 Q. Were you at any time connected with the gum business, and if so, with what firm or company?
A. I worked for Mr. Wrigley, I believe, in 1893 or 1894; 1894, I believe.
Q. 1894?
A. Yes, sir.
Q. And where was he situated at that time, or located?
A. 85 and 87 Kinzie Street.
Q. And what was his business at that time?
A. Why, chewing gum.
Q. Was he selling soap at the same time?
A. Scouring soap, yes, sir.
Q. Scouring soap?
A. Yes, sir.
Q. What did you do in connection with his business,—what were you doing?
A. Why, I run a little printing press there, printed small circulars.
Q. Yes. You may state whether or not Mr. Wrigley was then selling Spearmint gum.
A. No, sir, he was not at that time.
Mr. Aldrich: That is all. Take the witness.

*Cross-Examination by Mr. Offield.*

Q. Were you engaged throughout the years 1893 and 1894 in operating a printing press?
A. Yes, I believe I started in 1894.
1400 Q. Where abouts was that printing press located?
A. In the office.

Q. What were you printing upon that? Circulars, or cartons, or what?

A. Why, the premiums, there was a picture of the premium, then the name of the concern that this gum was shipped to, drug firm or grocery firm.

Q. And your sold duty was in the printing of these premium slips?

A. Yes, sir.

Q. During those two years?

A. Yes, sir.

Q. You had nothing to do with the packing of the gum?

A. Oh, yes, I worked in the shipping room occasionally.

Q. Continuously, or just on and off as they needed you?

A. On and off.

Q. And did you pack these various boxes of gum in wooden cases and send them out?

A. Yes, sir, and helped nail them and pack them.

Q. Did you have anything to do with the packing of the individual boxes, that is, with the gum packages in the boxes as distinguished from packing the boxes in the cases?

A. No, sir, they were already packed.

Mr. Offield: That is all, your Honor.

Mr. Aldrich: That is all, Mr. Engel.

1401 BERNARD F. GRZONTOWSKI, called as a witness on behalf of defendants, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Aldrich.*

Q. What is your name?

A. Bernard F. Grzontowski.

Q. Where do you reside?

A. 5111 Thirtieth Place, Cicero, Illinois.

Q. How long have you resided in Chicago or the vicinity?

A. Why, ever since I was born, until I got married and went to Cicero.

Q. Were you at any time connected with the Zeno Manufacturing Company?

A. Yes, sir.

Q. How long?

A. Well, about eighteen years all together.

Q. And from what year to what year?

A. I started in 1895 and I left in 1913.

Q. What were your duties connected with the Zeno Manufacturing Company?

A. Well, at the early part, first part, I was employed as an errand boy and helping in the manufacturing department.

Q. When you speak of manufacturing department, to what do you refer?

A. I just helped out in the room where they made the chewing gum.

1402 Q. And how long did you continue in that capacity?

A. Til 1905.

Q. What were your duties in the manufacturing department?

A. Oh, helping carry away from the machines.

Q. Taking the gum away from the machines?

A. Yes, and rolling it up.

Q. How was the rolling done, Mr. Grzontowski? With machines, or how?

A. With machines, yes, sir.

Q. And you may state whether or not you helped mix gum and prepare it.

A. Well, I helped for a while, yes.

Q. Who was your immediate superior officer?

A. P. A. Nelson.

Q. He was the gum maker, was he?

A. Yes, from the time that I started.

Q. Yes. And when did Mr. Nelson cease to be the gum maker?

A. In 1905, I believe, or 1906. Early part of 1906, I believe it was.

Q. And who became the gum maker at that time?

A. Why, I succeeded him at that time.

Q. And did you continue to be the gum maker from that time or until you left the service of the Company?

A. Yes, sir.

Q. In 1913?

A. Yes, sir.

Q. When, if you know, was the first Spearmint gum made by the Zeno Manufacturing Company for the Wrigley

1403 Company?

A. Why, there wasn't very much of it made. I remember in the year of 1902 we made some gum there and in 1903 there was a while there I remember making Spearmint gum.

Q. You may state whether or not the making of it was discontinued until some later date, and if so, when.
A. Yes, it was discontinued in that time, in 1902 or 1903.
Q. How are you able to fix the date 1902 or 1903?
A. Why, just because it was shortly after my marriage.
Q. When were you married?
A. In 1901.
Q. You were married in 1901?
A. Yes, sir.
Q. And when did you commence again making Spearmint gum?
A. In 1906.
Q. 1906?
A. Yes, about that.
Q. And from that time on until you left the service of the company in 1913—
A. Yes, sir.
Q. — you made Spearmint gum regularly, did you not?
A. Yes.
Q. You may state whether or not you were discharged by the Wrigley Company or whether you left voluntarily.
A. No, I left voluntarily.
Q. And you were not discharged?
A. No, sir.
Q. How was the first spearmint gum, if you know, manufactured by the Zeno Company for the Wrigley Company wrapped?
A. Why it was wrapped in tin foil at that time.
1404 Q. In 1902 or 1903?
A. In 1902 or 1903, yes.
Q. And were the separate sticks?
A. Yes, sir, it was separate, individual sticks, wrapped in tin foil.
Q. The five sticks together wrapped in tin foil?
A. Yes.
Q. And was there a counterband around the package or not?
A. Yes, there was a band on it.
Q. And when, if you know, was the wrapping of the gum changed from the tin foil package to the pink paper wrapping?
A. That was changed later on, that would be about 1906, that is the time I noticed it.
The Court: Is that all.
Mr. Aldrich: Yes, I think that is all, if the Court please.
The Court: Cross-examine.

*Cross-Examination by Mr. Offield.*

Q. Now, from 1895 to what year were you merely a helper in the manufacture of gum at the Zeno plant?
A. From 1895?
Q. Yes, to what year were you merely a helper?
A. Why, to 1905.
Q. To 1905?
A. 1905.
Q. You were merely a helper from 1895 to 1905?
A. Yes, sir.
1405 Q. Now, as helper, what were your duties, simply to carry the gum from the machines, from the mixing machines, over to the scoring machines?
A. Well, I was operating the rollers.
Q. But you had nothing to do with the mixing of the chewing gum itself, did you?
A. No, I hadn't.
Q. You had nothing to do with the flavors?
A. Not until that time, not till after.
Q. Not till after 1905?
A. Yes.
Q. So that you do not know what the flavors were that were put in these various brands of chewing gum prior to 1905?
A. No.
Q. Mr. P. A. Nelson, whom you succeeded there, died recently, did he not?
A. So I heard.
Q. He was the gum maker over you from 1895 to 1905?
A. Yes, sir.
Mr. Offield: That is all.
Mr. Aldrich: Q. You can tell by the smell the different flavors, could you not?
A. Oh, yes.
Mr. Aldrich: That is all.
Mr. Reed: We offer in evidence the deposition of William H. Constantine.
The Court: What is the substance of it?
Mr. Reed: He came on here to attend the trial when
1406 it went over the last time, and by stipulation his deposition was taken while he was here. The substance of it is that he was connected with the Zeno Manufacturing Company and the Rubber Paint Company from 1895 to December, 1909, in various capacities. At the termination of his serv-

ice he was sales manager, and he tells the duties. He knew the kind of gums that were made; tells the different brands that were made. He says they were made for Wrigley, and what brands of gum. When asked the brands of gum that were made for Wrigley he says prior to 1903, Juicy Fruit, Sweet Sixteen, Blood Orange, Nips, Peppermint, and a few ordinary flavors. When asked when they first manufactured Spearmint gum, he says to the best of his knowledge and belief the first Spearmint gum manufactured for distribution and sale was some time in 1906, although he says they made experiments from time to time.

The Court: Let the record show it was read in evidence.

Said deposition of William H. Constantine is in the words and figures as follows, to wit:

1407 * * * Nos. 30,563 and 488 * * *

The Deposition of WILLIAM H. CONSTANTINE, of Vineland, County of Cumberland, State of New Jersey, a witness of lawful age, produced, sworn, and examined under oath, on the 7th day of February, in the year of our Lord one thousand nine hundred and seventeen, at the office of Charles H. Aldrich, in the City of Chicago, in the County of
1408 Cook, in the State of Illinois, by me, Richard H. Wyman, a notary public in and for said County of Cook, State of Illinois, under a stipulation by and between the parties to the above entitled causes, whereby said deposition is taken, the dedimus and notice and all formalities being waived.

*Direct Examination by Mr. Aldrich.*

Q. You may state your name.
A. William H. Constantine.
Q. Where do you reside?
A. Vineland, New Jersey.
Q. State whether you were at any time connected with the Rubber Paint Company or the Zeno Manufacturing Company, and if so, in what capacity?
A. I was employed by the Zeno Manufacturing Company from October, 1895, to December 31, 1909, in various capacities, but for the period of about 1901 to 1909, or the termination of my service with them, as salesmanager.

Q. What were the duties of the sales manager particularly?
A. The ordinary duties of any sales manager in the care and direction of salesmen, correspondence with the salesmen and trade, the seeing to the proper filling of orders, and taking or having the confidential executive position that goes with sales manager.
Q. Did you have a considerable number of salesmen out on the road engaged in the sale of gum?
A. We did.

Q. You have mentioned the Zeno Manufacturing
1409 Company; was that incorporated, or was it a name under which they conducted the gum business?

A. My knowledge in the matter was that when I first went with them they were not incorporated, but in later years when I was with them they were a separate corporation from the Rubber Paint Company.
Q. Was the gum manufactured for any particular party, or were you manufacturing gum generally?
A. We were a manufacturing concern, manufacturing chewing gum for any responsible—financially responsible—or reputable parties that would pass the test of inspection.
Q. You may state whether or not you were also manufacturing gum for yourselves?
A. We were.
Q. How did you dispose of your gum?
A. By our salesmen.
Q. Did you have slot machines and were you engaged in that business also?
A. Yes, sir.
Q. You may state whether or not you manufactured and sold your own brands and also put up when you manufactured for other parties, manufactured their brands of gum?
A. I do not believe I just get that.
Q. The question is designed to show whether the Zeno Manufacturing Company had its own brands of gum which were manufactured, and also whether you manufactured gum for other parties who were engaged in the gum business under their brands?
A. We did.

Q. In that connection, state whether or not you
1410 packed and enclosed the gum in such wrappings as the several manufacturers might require?

A. You do not mean myself, individually, you mean the company?

Q. No, I mean the company.
A. Yes sir.
Q. What were the relations of the Zeno Manufacturing Company and William Wrigley, Jr. & Company, or, later, the William Wrigley, Jr., Company, if you know?
A. They were one of our customers through all that period of time; they were a customer of the house previous to my entering their service and beyond my service, and during the whole period of my service with them.
Q. During the whole period then, the Zeno Manufacturing Company did business with William Wrigley & Company?
A. Yes, sir.
Q. What brand of gum did you manufacture for William Wrigley & Company prior to, say, 1903?
A. They were really the general flavors of chewing gum, such as "Juicy Fruit", "Sweet Sixteen", "Nips", "Blood Orange", "Peppermint", and possibly a few other oridnary flavors such as they manufactured, or put out at that time.
Q. You may state when you first manufactured spearmint gum known as the gum for William Wrigley Jr. & Company, or William Wrigley, Jr., Company, or either of them?
A. To the best of my knowledge and belief, the first spearming gum manufactured for distribution and sale was
1411 some time in 1906.
Q. State whether or not any experiments had been made with the spearmint flavor prior to that time, and if so, at about what time, if you know?
A. We being manufacturers of chewing gum for various parties, as well as ourselves, we were always experimenting with flavors as far as I can remember. Many of those flavors were simply experiments, as most confectionery products are experimented with in trying to obtain a satisfactory blending flavor to appeal to the taste, as well as to retain an impression when chewing the product.
Q. In that connection, state whether or not you maintained a laboratory or had a chemist?
A. We did.
Q. You may state whether or not you did make any experiments, or recall that you did, with reference to spearmint flavor prior to 1906?
A. I cannot state.
Q. You may state whether so far as you know the Zeno Manufacturing Company manufactured all the gum for William Wrigley & Company?

A. I am very sure that we did.
Q. During the period of your employ?
A. During the period of my employ, yes, sir.
Q. What you have said with reference to the time when you first manufactured spearmint gum, does that apply also to the Rubber Paint Company as well as to the Zeno Company?
A. Yes, sir.
1412 Q. Now, when the gum was manufactured, what did you do with it? Just describe the process of handling it, what you did with it, the Wrigley's gum?
A. Why, it was delivered to him almost immediately upon completion of manufacture and ready for delivery.
Q. That question is designed to elicit whether or not you dressed it, packet it and everything. Will you just describe what was done with the gum?
A. Most of the gum was delivered in the boxes ready for repacking in cases. I might say in shipping cases by us, in large delivery boxes or trays holding possibly from fifty to one hundred boxes each. Up to a period when the sale of Spearming gum became very large and then we packed the spearmint gum in the original shippings cases and delivered it to William Wrigley that way, and my recollection is that that is the only gum that we furnished for them in the original cases.
Q. Then the gum was wrapped and packed in the boxes, with twenty packages of gum in a box, if I understand you correctly?
A. Yes, sir.
Q. Then enough of these boxes of twenty packages each to make a case, they were delivered in trays or did you put it in cases?
A. No, they were put in carriers, I may say, carriers that held from fifty to one hundred of these 20-package boxes.
Q. Where was this manufacturing done, the place of
1413 business of the Zeno Manufacturing Company?
A. Do you mean during the time of my employ?
Q. During the period of your employment, yes, give a full answer as to the different times?
A. In the first years, in the building on the north side of Van Buren Street, between Des Plaines and Halsted Streets; beginning about 1901 or 1902, in the new building on the south side of Van Buren Street, the old numbers being, I think, 154 and 156, until the fire of December 31, 1904, de-

stroyed that building; and the manufacturing was then done for a period of a year or a little more on Fulton Street, over the Fulton market which is, I believe, between Jefferson—no, between Desplaines and Union streets, I believe.

Q. All in Chicago?

A. Yes, sir, yes, sir; and then when the new building on the site of the destroyed building was completed, which was in the early part of 1906, the manufacturing was then done there.

Q. Where was Mr. Wrigley's establishment during this period?

A. At one time on Michigan Avenue; at another time on Kinzie street, between Clark and LaSalle; and then the next location I do not recall, but they were all in Chicago.

Q. You have referred to a fire on December 31, 1904; you may state whether or not you were present after that fire and saw the safe of the company opened?

A. I was more or less around at that time.

1414 Q. Where were the safes and vaults located before the destruction of the building?

A. The so-called fireproof safes were in the basement and first floor.

Q. You mean safes or vaults?

A. Vaults, I should have said, yes, sir, then instead of safes.

Q. Did you have any safes aside from the vaults, Iron or steel safes?

A. I think we did.

Q. State whether or not the contents of those safes and vaults were destroyed by the fire?

A. Not completely destroyed; they were some of them severly damaged, as a result from the effects of water, but the current books came out all right as I recall that the general manager at that time congratulated himself upon their safety.

Q. State whether or not you made spearmint for any one before you made it for Wrigley?

A. No, sir.

Q. You may state whether or not you recall that the first spearmint gum was made after you got back into the new building, after the fire?

A. Yes, sir.

Q. You may state, if you remember, how the first spearmint gum was wrapped, that you manufactured for the William Wrigley, Jr., Company?

A. My earliest recollection is of its being five sticks together, wrapped with foil and then a counter band.

Q. Do you mean that each individual stick was wrapped in foil, or were the five sticks together wrapped in foil?

1415 A. The five sticks together were wrapped in foil.

Q. You may state whether or not you remember the fact that Mr. Wrigley inaugrated an advertising campaign on spearmint gum?

A. Yes, sir.

Q. Are you able to state when that was? If so, state.

A. I should say it was the last of 1906, or the fore part of 1907.

*Cross-Examination by Mr. Offield.*

Q. In 1895, when you first employed by the Zeno Company, what were the names of the brands of gum that the Zeno Company were then making for William Wrigley, Jr., & Company?

A. I think I enumerated those that I could recall at the time.

Q. Please enumerate them again specifically, all that you can possibly recollect.

A. "Juicy Fruit", "Pepsin", "Blood Orange", "Peppermint", "Banana". I think that is all I can just now recall. I made the statement when I was interrogated before. What I enumerated before were all of those brands made in 1895, but I have just stated those that I recall being made in 1895.

Q. In 1895, do you know about how great the volume of the gum business was between the Zeno Company and the Wrigley Company?

A. Do you mean in dollars and cents?

Q. Either in dollars and cents or in quantities, boxes, either way you have of determining the quantity of it?

A. No sir; because at that time we were shipping

1416 both to Philadelphia and Chicago.

Q. Was it a fair sized gum business or was it a small gum business, according to your understanding?

A. Well, at that time it was of fair size. The gum was being used for scheme purposes, most of that gum at that time was being sold by men with a scheme and it increased year after year.

Q. Would you say that the gum business between the Zeno Company and the Wrigley Company in 1895 amounted to $150,000?

A. I should say, so, yes, sir.
Q. You would say more than that, wouldn't you?
A. Yes, sir.
Q. In 1896 what brands of gum were the Zeno Manufacturing Company making for the William Wrigley, Jr., Company, other than those you have named as having been made in 1895?
A. During the years 1896 and 1897 and 1898, I was on the road for them and I cannot answer that question.
Q. You were on the road for the Zeno Company or the Wrigley Company?
A. The Zeno Manufacturing Company. I never was in the employ of the William Wrigley Company.
Q. Were you selling any of the Wrigley brand of gum when you were on the road?
A. No, sir, nothing but the Zeno chewing gum.
Q. And you did not know anything about what was being manufactured by the Zeno Company for the Wrigley
1417 Company between 1896 and 1898, is that right?
A. I might say approximately no.
Q. By "approximately no", do you mean that I am not right in my form of statement, or that I am approximately right?
A. I might define my statement by saying that if there had been anything new put out by the William Wrigley, Jr., Company, whatever the style of the package, I would have seen it in my travels on the road, would have known it.
Q. If it had any distribution whatever?
A. Yes.
Q. What territory were you covering at that time?
A. The Central States, including Michigan, part of Wisconsin, part of the Dakotas, Southern Minnesota, Iowa, Nebraska, Illinois, Indiana, Kentucky, a section of West Virginia and one or two large cities in Ohio, I think Cincinnati was the only city in Ohio.
Q. What was the character of your work, or what were your duties while employed by the Zeno Manufacturing Company in 1895?
A. When I started with them I was in the office billing out all the gum sold.
Q. Was the gum billed out at that time under the name of a brand, or as merely foil wrapped or paper wrapped product?
A. The brand, including the designation, either foil or

paper wrapped; that is, when it was Wrigley's gum; all our own gum was always under a brand.

Q. What I mean is if you billed out an order of pep-
1418 permint gum for the Wrigley Company, would that be billed out as peppermint foil wrapped or peppermint paper wrapped or merely foil or paper wrapped?

A. It was billed out as peppermint foil or peppermint paper, because there was a difference in the price.

Q. So that all gums were billed out by the Zeno Manufacturing Company under a brand name and an indication of the character of the wrapping, as I understand you?

A. As I recall, yes.

Q. But if there were any other gum of any brand other than that you have specified being manufactured by the Zeno Company and billed to the Wrigley Company in 1895, you would have been in a position to know about it, would you not?

A. Yes, sir.

Q. Now, what did you do in the year 1899?

A. I took charge of their city business and also spent part of my time in the office.

Q. Were there any brands made for William Wrigley, Jr., & Company by the Zeno Company in the year 1899 than those brands that you have named as having been made in 1895?

A. We made the "Nips" for them, also the "Sweet Sixteen" I think about that time. The "Nips" were not manufactured any length of time and "Sweet Sixteen" I think was manufactured about that time, or possibly, a little later.

Q. But you know positively that no spearmint was
1419 wrapped or manufactured by the Zeno Manufacturing Company for the William Wrigley, Jr., Company in the year 1899? Is not that a fact?

A. Yes, sir. That is, as far as my knowledge permits me to answer that question.

Mr. Offield: I do not expect anything further than your own knowledge, of course.

Q. You would be in position to know and were in position to know in 1899 of the various brands of chewing gum that the Zeno Company were making for Wrigley Company, weren't you?

A. Yes, sir.

Q. You are quite positive that there was no spearmint gum made by the Zeno Company for the Wrigley Company in 1899?

A. If it was made, it was never made for sale or distribution.

Q. Never in any quantity at all?

A. No, sir.

Q. Not as much as, say, five or ten boxes or anything of that kind?

A. Well, a sample would be that much, anyhow.

Q. How much would be past the sample stage and constitute what you would call a distribution?

A. Why, that would depend a great deal on the mix and the size of the sample, I think.

Q. Would you say that there was as many as five hundred boxes of spearmint in the year 1899, and that if there were you would have known about it?

A. Yes, I think I would.

Q. In the year 1900 were there any additional brands
1420 of chewing gum made by the Zeno Company for the Wrigley Company other than those brands which you have stated you knew of that were made in 1895 and 1899?

A. I do not recall any at this time—oh, we made the "Vassar" gum for them, I think it was made along about that time.

Q. That is about 1900 or 1899?

A. It would be after 1899.

Q. Now, in the year 1900, you are quite positive that there was no spearmint gum made by the Zeno Company for the William Wrigley Jr. Company in that year, are you?

A. Yes, sir.

Q. In the year 1901, are you quite positive that no spearmint gum was made by the Zeno Company for the William Wrigley Jr., Company?

A. Yes, sir.

Q. You would be in position to know if there was any made in that year, in any quantity at all?

A. Yes, sir.

Q. Now, in the year 1902, are you quite positive that no spearmint gum was made by the Zeno Company for the William Wrigley, Jr., Company?

A. Yes, sir.

Q. You would be in position to know if any had been made for the William Wrigley, Jr., Company in that year?

A. Yes.

Q. Now, in the year 1903, you are quite positive that if any spearmint chewing gum was made by the Zeno Manu-

facturing Company for the William Wrigley, Jr., Com-
1421 pany, you would have been in a position to know?
A. Yes, sir.
Q. If there had been any spearmint gum made during that year by the Zeno Company?
A. Yes, sir.
Q. Now, in the year 1904, you are quite positive that there was no spearmint gum made by the Zeno Manufacturing Company for the William Wrigley, Jr., Company?
A. Yes, sir.
Q. You would be in a position to know if any gum had been made by the Zeno Company for the Wrigley Company, spearmint furnished in that year?
A. Yes, sir.
Q. What were your duties in the year 1904 with the Zeno Company?
A. Assistant sales manager.
Q. While you were with the Zeno Manufacturing Company, you had nothing to do with the William Wrigley, Jr., Company?
A. No, sir.
Q. Or the goods made by the Zeno Company for the Wrigley Company?
A. I had access to their orders, and their orders were more or less before me all the time.
Q. But it was not a part of your duty to inspect those orders, was it?
A. No, sir.
Q. In the year 1905, are you quite sure that the Zeno Manufacturing Company did not make any spearmint for the William Wrigley, Jr., Company?
A. Quite sure.
Q. And you were in a position to know at that time and would have known if the Zeno Manufacturing Company had made any spearmint gum or shipped any spearmint
1422 gum to the William Wrigley Jr., Company, in 1905?
A. Yes, sir.
Q. What were your duties with the Zeno Manufacturing Company in that year?
A. Sales Manager.
Q. Now, as I understand you, it was in the year 1906 when you for the first time had any knowledge of spearmint gum being made by the Zeno Manufacturing Company for the William Wrigley Jr., Company, or anybody else?
A. Yes, sir.

Q. About when in 1906, do you recall?

The Witness: Before I answer that question, may I have a private conversation with Mr. James Cox?

Mr. Offield: I prefer your own recollection on that.

The Witness: I will give my recollection, but, first may I have a private conversation with him for a moment?

Mr. Offield: No, I prefer to have you answer that question on the record.

(Last question read).

A. The exact time in 1906 I cannot say, but I am positive it was 1906 from a certain incident that occurred that is indelibly impressed on my mind, and it could not have happened any time previous to 1906.

Q. What was that incident?

A. It was a confidential conversation held in Mr. A. G. Cox's front office, which he did not have previous to the building of the new building and the campaign in 1906.

Q. And that conversation related to an advertising 1423 scheme for the William Wrigley, Jr., Company for spearmint gum?

A. And the manufacture of it.

Q. Yes, In what business are you now engaged?

A. Trying to raise poultry.

Q. Were you subpoenaed to testify in this case?

A. I was not subpoenaed, no, sir.

Q. You appeared voluntarily?

A. If you mean by that offered by services, no.

Q. How did you happen to testify? You do not live in the State of Illinois, do you?

A. I was communicated with by the attorney for the defendant.

Q. And you came on here voluntarily to testify?

A. Through their solicitation.

Q. Where did you come from?

A. From my home in Vineland.

Q. Where?

A. Vineland, New Jersey. I knew that if I did not appear, I could be subpoenaed.

Mr. Offield: That is all.

*Redirect Examination by Mr. Aldrich.*

Q. You may state whether or not you did see any spearmint gum while you were on the road during your employment with the Zeno Manufacturing Company?

A. I do not recall seeing any.

Q. You have mentioned a confidential communication or conversation in Mr. Cox's office that could not have occurred prior to 1906, and you then requested a private talk

1424 with Mr. Cox, who is in the room.

A. This is not A. G. Cox that had the conversation, this is James C. Cox. In fact, James C. Cox was not present at that time.

Q. Was the A. G. Cox, to whom you refer, connected with the Zeno Manufacturing Company?

A. He was general manager.

Q. He was general manager at that time?

A. Yes, sir.

Q. Where is he now?

A. Why, I don't know; I was just told he was in—out of the city, I don't know where.

Q. In asking for a private conversation since you have been in this room with Mr. Cox, you refer to James C. Cox, who is present?

A. Yes, sir.

Q. And he is with Mr. Reed, is he not?

A. Yes, sir.

Q. You have not communicated with him or with Mr. Reed or to any one the nature of the private conversation have you?

A. Absolutely not.

Q. You stated, did you not, here the circumstance but not the nature of anything, that enabled you to state positively that there was no spearmint gum manufactured prior to 1906?

A. For distribution and sale, yes sir.

Q. And that incident as it would not seem was a private conversation? Am I correct in that?

A. Yes, sir.

Q. Why are you unwilling to state the nature of the conversation?

1425 A. I consider it a business confidence, even though I am not now in the employ of the company, I think I am entitled to hold, unless the court orders the disclosure of it, and then I would feel at liberty to state it.

Q. You would feel at liberty if Mr. Cox, who is present, and Mr. Offield, on Mr. Cox's motion, asked you to state it, would you?

A. With the understanding that they forced me to disclose it, I would.

Hr. Aldrich: That is all.

Mr. Offield: That is all.

Signature waived by agreement of counsel.

State of Illinois, } ss.
County of Cook. }

I, Richard H. Wyman, a notary public in and for the County of Cook in the State of Illinois, do hereby certify that the foregoing deposition of William H. Constantine, was taken before me pursuant to the above stipulation, waiving all formalities; that previous to the commencement of the examination of the said William H. Constantine, as a witness in the above named suits, he was duly sworn by me as such notary to testify the truth in relation to the matters in controversy between the above named complainants and defendants, so far as he should be interrogated concerning the same; that the said deposition was taken at the office of Charles
1426 H. Aldrich, Suite 1039 The Rookery Building, in the City of Chicago, in the County of Cook and State of Illinois, on the 7th day of February, A. D. 1917, and that after said deposition was taken by me as aforesaid, in shorthand, it was thereafter transcribed into tyepwriting under my direction, and that the foregoing pages, numbered 1 to 19 inclusive, are a true and correct transcript of shorthand notes, and that the signature of the witness to the said deposition as above written was expressly waived by counsed for the respective parties hereto.

RICHARD H. WYMAN

(Richard H. Wyman
Notary Public
Cook County, Ills)

Notary and stenographer's fees paid by the defendant $12.

RICHARD H. WYMAN,
*Notary Public.*

1427 J. A. CAULFIELD, a witness called on behalf of defendants, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Aldrich.*

Q. What is your name?
A. J. A. Caulfield.
Q. Where do you reside?
A. Chicago.
Q. With what company are you connected?
A. R. J. Kittredge & Company.
Q. In what capacity?
A. Assistant manager.
Q. As such, I will ask you whether you had to do with receiving an order in December, 1913, for the Wintermint package?
A. Yes, sir.
Q. I hand you a paper, this doesn't seem to be the earlier one, but it will do, I want to put it in evidence, anyhow. I have been traveling so fast, if the Court please, I mislaid a paper or two here that I ought to have.
The Court: It seems fast to you; it doesn't seem fast to me.
Mr. Aldrich: Q. You recognize that paper as having been in your hands before, do you not?
A. Yes, sir.
Q. You may state when, first, Mr. Larson of the L. P. Larson, Jr. Company ordered any wintermint flavors.
1428 A. As well as I can recollect, the latter part of 1913.
Q. And did he order subsequent labels from time to time, up to and including May or June, 1914?
A. I only recall two orders.
Q. What was the total of those orders, if you know?
A. I couldn't state exactly.
Mr. Aldrich: I will ask the Court's indulgence for just a moment; I am sure I can put my hand on the paper.
Q. Were the labels which you printed for L. P. Larson, Jr. Company such as I show you, I am referring both to the outside and to the inside?
A. Well, as I recollect, that is the same proposition.
Mr. Aldrich: I am showing him a box.

The Court: Defendants' Wintermint Pepsin Chewing Gum.

Mr. Aldrich: Q. You don't recall now the number of labels made at that time?

A. Not exactly; no, sir.

Q. Would this enable you to?

The Court: Is the number material?

Mr. Aldrich: I don't think it is.

The Court: I don't, either.

A. That would settle the quantity, as far as the order was concerned.

Mr. Aldrich: That is all.

1429 Mr. Offield: No cross-examination, your Honor.

CHARLES T. FRANTZ, a witness called on behalf of Defendants, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Aldrich.*

Q. What is your name?

A. Charles T. Frantz.

Q. Where do you reside?

A. 4002 Kenmore Avenue.

Q. How long have you lived in Chicago?

A. This last time? Do you refer to the present residence?

Q. Well.

A. Abour four months this time. I was absent from the city three years, and prior to that I was here twenty years.

Q. Please state whether at any time you were connected with the Zeno Manufacturing Company; If so, in what capacity.

A. Not with the Zeno.

Q. With what company were you connected?

A. I was with Mr. Joy, who manufactured the Zeno machine.

Q. And what business were you in prior to that time?

A. In a machine shop located at 85 Fifth Avenue.

Q. Under what firm name or style?

A. The Frantz-Gage Manufacturing Company.

1430 Q. And after you sold out to Mr. Gage you went with Charles H. Joy, who manufactured the Zeno gum vending machines, is that right?

A. Yes, sir.
Q. And how long were you with Mr. Joy?
A. About two years.
Q. And state whether or not you manufactured a great many gum vending machines. This is only introductory.
A. At the time I was there orders were coming through in abouve five thousand in an order, and we generally had three or four of those orders on hand.
Q. State whether or not you at that time were familiar with the Pulver or Di-Gesto gum.
A. I was familiar with the Pulver gum.
Q. And what year was this, what period?
A. At the time I was with Mr. Joy?
Q. Yes.
A. That was 1898, I believe.
Q. Did you ever have any other connection, directly or indirectly, with the Zeno Company?
A. No, sir.
Q. Did your business of making gum vending machines lead you to have knowledge of the gums that were on the market?
A. Yes, sir.
Q. Was the gum which you have referred to as the Pulver gum, the spearmint gum or some other gum?
A. There was a spearmint gum, yes.
1431 Q. In what kind of wrappers was it?
A. It was wrapped in a wrapper similar to the Yucatan, five packages to a bundle, and wrapped with a wrapper on the outside holding the five pieces together.
Q. And what were the colors, if you recall, of the outside wrapper?
A. Well, it was, as I remember, a plain white wraper, with colored printing, printing in green and red.
Q. You may state whether or not you knew of any other spearmint gum on the market at that time.
A. No, sir, I did not.
Q. Was the Pulver gum sold here in Chicago?
A. It was, at the time I first got hold of it, yes.
Mr. Aldrich: That is all.

*Cross-Examination by Mr. Offield.*

Q. Where abouts did you first see a package of Pulver gum?
A. At what store, do you mean?

Q. Yes.
A. I couldn't really state that.
Q. Did you buy it or was it given to you?
A. I bought it.
Q. Was it a slot machine package or a straight five cent package?
A. A straight five cent package.
Q. Was it made by H. H. Pulver or Frank F. Pulver?
1432 A. Frank F. F. F. Pulver.
Q. The name was on the package, was it?
A. Yes, sir.
Q. That was in the year 1898. How do you fix that year?
A. The date that I fix more naturally was prior to that a couple of years, when I was experimenting on the proposition.
Q. Experimenting with what?
A. With vending machines, for the purpose of vending one of these loose wrapped gums.
Q. Were you experimenting for the purpose of vending one of Pulver's five cent packages?
A. Pulver, or anyone else. The idea was to take any package that was built that way and be able to vend it, that is, to answer your question, that was in 1896.
Q. You mean you had the Pulver gum in 1896?
A. Yes, sir.
Q. Or you merely got the idea of making a machine for vending it?
A. That is the time I was working on the machine in an experimental way.
Q. You didn't see any of Wrigley's gum in 1898, you didn't see any of Wrigley's Spearmint gum? Did you see any of Wrigley's Spearmint gum in 1898?
A. No.
Q. Did you see any of Wrigley's Juicy Fruit in 1898?
A. I don't think I did, no.
Q. Talk a little louder, please.
A. I don't think so.
Q. Did you see any of the Zeno gums in 1898?
A. Yes, sir.
1433 Q. Did you see Wrigley's Beeman gum in 1898?
A. Yes, sir.
Mr. Aldrich: That is a new name for it.
Mr. Offield: Q. Wrignely's Pepsin gum, I should say, in 1898.

A. No, sir.

Q. Did you see any of Wrigley's gum outside of Juicy Fruit and Wrigley's Pepsin in 1898?

A. No, sir.

Mr. Offield: That is all, your Honor.

Mr. Aldrich: That is all.

Mr. Dellenberg is not here, your Honor.

The Court: What do you expect to prove by him?

Mr. Aldrich: He would testify that he went to the Zeno Company in 1906 and was with them a while and then left there for six weeks, then went back to build them a gum wrapping machine. And during 1906, while he was in the gum room, he made a batch of Spearmint gum, the odor of which was so strong that the girls refused to wrap it, he could only get two girls to wrap it, and they made very little Spearmint gum that year. That he completed his gum machine in 1907, and they had commenced their campaign in that year, the Wrigleys had.

The Court That is just cumulative.

Mr. Aldrich: No, but his intimate knowledge of making that machine and knowing about it.

1434 The Court: Where is he?

Mr. Aldrich: He was here today.

The Court: Send out after him.

Mr. Aldrich: I have told my people to go after Mr. Dellenberg. He was here until two hours ago.

The Court: I will issue an attachment for him and get him here.

Mr. Aldrich: Well, I will go on with Mr. Larson, if the Court please, till we adjourn, then I will have him here early tomorrow morning.

The Court: Are you through, with the exception of these two witnesses?

Mr. Aldrich: I think I am. I have a list of my witnesses here. I am going to call Mr. Offield, my opponent here, unless he will stipulate as to what Mr. Atwater sworn to in the Pulver case.

The Court: Let us get along.

Mr. Aldrich: Well, Mr. Offield, go on the stand.

Mr. Offield: I have already agreed, I believe, with Mr. Aldrich that if Mr. Atwater were not here his whole deposition could go in as taken in the Pulver case.

Mr. Aldrich: We haven't such an agreement, but I will accept such an agreement.

The Court: Let the record show that this gentlemen's
1435 testimony in a certain record is introduced, let it be considered as read.

Mr. Aldrich: All right.

Said Atwater deposition is in words and figures as follows, to-wit:

1436 IN THE UNITED STATES DISTRICT COURT

Southern District of New York.

| | |
|---|---|
| Wm. Wrigley, Jr. Company, a corporation organized under and by virtue of the laws of the State of West Virginia, *Complainant,* —*vs*— Di-Gesto Company, a corporation organized and existing under and by virtue of the laws of the State of New York, Frank F. Pulver and Charles E. Blauvelt, *Defendants.* | In Equity. Unfair Competition. |

Testimony taken in behalf of the complainant at the office of Offield, Towle, Graves & Offield, Room 901 Park Row Building, New York City, before Julia Levy, a Notary Public, beginning at 10 A. M. on the 14th day of November, 1912, pursuant to notice and agreement between counsel.

Present on behalf of the defendants:

George F. Hixon;

On behalf of the Complainant:

Mr. James R. Offield.

Thereupon, MR. BERT L. ATWATER was called a witness produced in behalf of the complainant and being first duly sworn, deposes and testifies in answer to interrogaties propounded by Mr. Offield as follows:

Q. 1. Please state your name, age, residence and occupation?

A. Bert L. Atwater, ago 45 years, residence, Garden City,

Long Island, occupation Manager William Wrigley Jr., 1437 Company, New York, Brooklyn Branch.

Q. 2. How long have you been the Manager of the William Wrigley, Jr. Company, in the New York and Brooklyn Branch?

A. Since 1907.

Q. 3. What territory does your managership cover?

A. The Greater New York, Long Island, Northern part of New Jersey and New York State along the Hudson to Albany.

Q. 4. During what part of the year 1907 did you assume the duties of Manager in the territory named for William Wrigley, Jr., Company.

A. In October.

Q. 5. At the time you assumed such duties was there any gum flavored with spearmint and known to the trade as spearmint gum upon the market in Greater New York?

A. Not to my knowledge.

Q. 6. What do your duties as Manager of Wm. Wrigley, Jr. Company consist of?

A. I have charge of the sales department, attend to credits and also supervise the manufacturing factory in Brooklyn.

Q. 7. To what class of people to you sell the gum product of the complainant?

A. Wholesale confectioners, wholesale druggists, wholesale grocers, export houses and a few large retailers.

Q. 8. Do the class of customers which you have named handle a chewing gum product of manufacturers other 1438 than the complainant?

A. They do.

Q. 9. Do you personally visit the places of business of the classes of customers named by you?

A. I do.

Q. 10. May I understand then that since 1907 you have been generally familiar with all of the different chewing gum products upon the market in Greater New York handled by such companies?

A. I have.

Q. 11. Can you state generally about how much money is expended in advertising by the complainant in Greater New York during the past two years?

Mr. Hixson: Objected to as immaterial.

A. In excess of $100,000 per annum.

Q. 12. And in what form of advertisements is this sum expended?

Mr. Hixon: Same objections to all questions of this nature.

A. Electric signs, subway, elevated and surface car advertising, billboards, both painted and paper, posters on the elevated stations, posters in the subway station, programmes and charitable periodicals.

Q. 13. Through what class or classes of people is the spearmint gum product of the complainant sold to the purchasing public?

A. Through the news companies, retail dealers and street venders.

1439 Q. 14. Can you state about what percentage of spearmint gum product of the complainant is sold through the medium of street peddlers in Greater New York?

A. I cannot, although there is a large amount.

Q. 15. Would you say as much as half?

A. No.

Q. 16. In what form is the spearmint gum product of the complainant sold by the street peddlers?

A. It is sold in five cent packages, also individual penny slices.

Q. 17. Are you familiar with the chewing gum product of Di-Gesto Company, one of the complainants herein, sold under the name of spearmint?

A. Yes.

Q. 18. Please state if you know of or if there has been called to your attention any method practiced by dealers in spearmint gum such as street peddlers whereby the spearmint product of the Di-Gesto Company is palmed off on the purchasing public as and for the spearmint product of the complainant?

Mr. Hixson objects to the question on the ground that it is incompetent, irrelevant and immaterial. It assumes facts which have not been proven and also as not binding on this defendant unless it appears that the acts of street ped-

1440 dlers anothers were instigated by or authorized by the defendants.

A. It has been brought to my attention that on different occasions slices of the complainant's product has been removed from the original package and Di-Gesto and B. H. Adams brand inserted to take their place. I personally have seen the five cent packages of Di-Gesto and B. G. Adams spearmint mixed with the original package of the complain-

ant in the complainant's carton and offered for sale in front of the theaters.

Mr. Hixson further objects to the fore part of the answer as hearsay and asks to have the same stricken from the record.

"19. For how long a time have you personally know that the spearmint product of the Di-Gesto Company and the B. G. Adams Company have been co-mingled with the spearmint product of the complainant?

Mr. Hixon: Same objection as to preceding question and to all questions of this nature.

A. During the past summer.

Q. 20. Please state if the B. G. Adams Gum product which you have referred to is wrapped with an outside wrapper binding five individual sticks of gum which are individually wrapped and both outside and individual wrappers closely resembling in appearance the spearmint gum packages of
1441 the Di-Gesto Company?

Mr. Hixson: Further objected to on the ground that it is irrelevant and immaterial, not pleaded in this action and not having been shown that these packages were produced prior to the commencement of this action.

A. It does.

Q. 21. In those instances where the Di-Gesto spearmint product and the B. G. Adams product have been co-mingled with the spearmint product of the complainant, what form of boxes or containers are used by the street peddlers or others for holding all of the products?

A. Wrigley's Spearmint carton.

Direct Examination Closed.

*Cross-Examination by Mr. Hixson.*

XQ. 22. Are you a relation of Mr. Wrigley by marriage or otherwise, Mr. Atwater?

A. I am not.

XQ. 23. You had no connection with the gum business prior to 1907?

A. I was in the gum business prior to 1907.

XQ. 24. How long prior?

A. About two years.

XQ. 25. And what was your connection with the gum business during those two years?

A. I was selling chewing gum manufactured by the
1442 Zeno Manufacturing Company of Chicago and also buying Chicle for that company.

XQ. 26. Prior to 1908 you had not seen any gum with the spearmint flavor?

A. I never had.

XQ. 27. Have you ever heard of it?

A. I had not.

XQ. 28. What territory did you cover for the Zeno Manufacturing Company at that time?

A. Greater New York.

XQ. 29. You sold practically since your connection with the Wrigley Company to the jobbers only?

A. Practically.

XQ. 30. What is the principal feature of the Wrigley Company's advertising?

A. I should say street car.

XQ. 31. I refer, Mr. Atwater to the context?

A. Why, advertising our trade-dress, the package.

XQ. 32. Isn't it a fact that practically all of your advertising contains the word "Look for the spear"?

A. A great deal of it does.

XQ. 33. Isn't it a fact that all of your advertising matter contains a spear?

A. Yes.

XQ. 34. Your package, your carton and your individual stick all have the spear in a very prominent manner thereon?

A. They have.

XQ. 35. Is it your opinion as an advertising man that where you feature the words "Look for the spear" the
1443 advertising public will look for the spear on the package?

Mr. Offield: This question is objected to on the ground that this witness has not been qualified as an expert in advertising.

A. I am no advertising man.

XQ. 36. During the time in which you have been a manager and in charge of the New York business of the Wrigley Company, you have supervised the expenditure of about how much money in advertising?

A. I have nothing to do with the advertising.

XQ. 37. Didn't you state a few minutes ago in reply to a question of Mr. Offield that you supervised the advertising in the street cars and other places in New York City?

A. I do not think I did. If I did I misunderstood his question. I stated I supervised the manufacturing factory in Brooklyn.

XQ. 38. Do you remember testifying in the Grove case, Mr. Atwater?

A. I do.

XQ. 39. You testified to that effect in the Grove case, did you not?

A. I don't recall.

XQ. 40. If you did so testify it was true?

A. Well, it all depends upon what you mean by supervising the advertising.

XQ. 41. What do your duties consist of with ref-
1444 erence to the advertising?

A. I check up the advertising in Greater New York and place some small contracts, but the general advertising is placed in the general office in Chicago.

XQ. 42. Then, Mr. Atwater, as a member of the purchasing public, if you saw an advertisement in which the words "look for the spear" were featured would you look for the spear in purchasing that product?

A. I would, but I might get stung as I was in front of the Hippodrome as I had paid my good money and looked for the spear after I got in the theatre and found a package of Di-Gesto in my hand.

XQ. 43. You found out then that you had been deceived by looking for a spear on the package?

A. I wasn't looking for the spear, I was looking for Wrigley's gum.

XQ. 44. How did you find out then that it wasn't Wrigley's gum?

A. I didn't see Wrigley's name on it but did see Di-Gesto.

XQ. 45. Now, Mr. Atwater, if you had taken the pains to look at the package at the time you purchased it, you would have seen that Wrigley's name was not on the package?

A. As long as they were selling it out of Wrigley's
1445 carton I naturally supposed that it was Wrigley's product.

XQ. 46. How do the retailers in general exclusive of the pedlers sell the Wrigley product from the box?

A. Largely from the box, and also from jars.

XQ. 47. The defendants do not put out their package in jars, do they?

A. Not to my knowledge.

XQ. 48. Are you acquainted with the carton or box of the defendants?

A. Not familiar with it.

XQ. 49. You know, do you not, that there is no resemblance between the carton or box of the Wrigley Company and that of the defendant?

A. I have never seen any resemblance.

XQ. 50. The B. G. Adams gum has what is called an ox-blood color wrapper for the individual sticks, has it not?

A. It has.

XQ. 51. When did you first see any of the B. G. Adams Company product?

A. I can't state the date but it was subsequent to the Di-Gesto.

XQ. 52. Are you acquainted with the individual wrapper of Wrigley's Lik-Ris gum?

Mr. Offield: Objected to as being outside of the direct examination.

A. I am.

XQ. 53. That was of an ox-blood color, was it not?

A. It is.

1446 And that same objection and it is understood that this objection may apply to all such questions pertaining to Lik-Ris Gum.

XQ. 54. And the Lik-Ris gum product appeared to your knowledge subsequent to the appearance of the B. G. Adams Company product?

A. Not to my knowledge in this market.

XQ. 55. Would you say it did not?

A. I handled Lik-Ris gum here last year and to my knowledge I didn't see any B. G. Adams gum until after.

XQ. 56. Do you know of any other gums on the market that have an ox-blook color individual wrappers?

A. I don't except the Forbidden Fruit.

XQ. 57. And what was the color of the individual wrapper of the Forbidden Fruit.

A. The same color as Lik-Ris.

XQ. 58. The individual wrapper?

A. Yes.

XQ. 59. Do you know when Wrigley's Lik-Ris gum appeared on the market here?

A. I put it out last winter.

XQ. 60. Has the printed matter on that package been changed recently?

A. What do you mean by recently?

XQ. 61. Since it was first put upon the market?

A. Not the Lik-Ris gum.

1447 *Redirect Examination by Mr. Offield.*

RDQ. 62. You testified in answer to XQ. 26 that you had not seen any gum with a spearmint flavor prior to 1907?

A. I did.

RDQ. 63. Had you ever seen Wrigley's spearmint gum prior to 1907?

A. I did not.

RDQ. 64. Is it not a fact that many forms of advertising cards used by the complainant have shown the spearmint package of the complainant in color form?

A. They have.

RDQ. 65. Is it or is it not a fact that for several years last the complainant has had large electrical signs in the City of New York wherein the spearmint package of the complainant has been reproduced in color form by either forming the outline of the package and printed matter thereon with colored lights or by illuminating a painted sign with electric light?

A. We have had several of such signs.

RDQ. 66. Is it or is it not a fact that there has been a wide distribution of posters put out by the complainant showing a five cent package reproduced in colors of the complainant's spearmint product?

1448 Mr. Hixson: All this is objected to as leading.

A. It is.

RDQ. 67. Is there any difference in price to the wholesale jobber between a box of Di-Gesto gum containing twenty packages and each package containing five individual sticks and a box of the complainant's product contain— twenty packages and each package containing five individual sticks?

Mr. Hixson: That is objected to as incompetent, irrelevant and immaterial and further on the ground that the evidence which this witness might give in that regard would be purely hearsay.

A. I believe there is a very material difference.

RDQ. 68. Can you state approximately what that difference is?

A. Twenty cents per box.

Mr. Hixson: Same objection to that as to the preceding question.

RDQ. 69. Do you mean that the Di-Gesto product sells for twenty cents more or less per box than the complainant's product?

Mr. Hixson: Same objection.

A. Less.

1449 *Recross Examination by Mr. Hixson.*

RXQ. 70. There has been a change in the manner of wrapping the Wrigley spearmint gum product since 1907 when first you placed the same upon the market here in New York?

A. Not to my knowledge except in the export package.

RXQ. 71. When the gum first appeared here in New York was it not a foil wrapped package?

A. Not in New York.

RXQ. 72. When was the change made from a foil wrapped package to an individually wrapped package?

A. I don't know.

RXQ. 73. But you do know that there was such change?

A. I do know they wrapped it both ways at the same time.

RXQ. 74. Don't you know that there was a time when all of the Wrigley's spearmint gum product was foil wrapped?

A. I was not familiar with the Wrigley spearmint gum prior to 1907.

RXQ. 75. In 1907 did the band which went around the five individual sticks contain the words "The new flavor"?

A. I don't recall.

(Signed) BERT L. ATWATER.

Deposition closed.

Notarial certificate waived.

1450 Mr. Offield: I would like to substitute a whole, complete box of Wrigley's gum, similar in all respects to the exhibit originally filed in the case, but from which all the packages of gum have disappeared except one.

The Court: This one?

Mr. Offield: Yes, your Honor. I think it makes some difference whether those boxes are compared empty or whether they are compared full.

"L. P. LARSON, JR., called as a witness on behalf of defendants, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Aldrich.*

Q. Will you state your name?
A. L. P. Larson, Jr.
Q. You are connected with the defendant company, L. P. Larson, Jr. Company?
A. Yes, sir.
Q. What office do you hold?
A. President.
Q. President of the company. You are also a director of the company?
A. Yes, sir.
Q. I wish to call your attention to certain correspondence that you had with the Wrigley Company in May and June, 1914 and which has been identified in evidence. Have
1451 you that correspondence, Mr. Larson?
A. I have not.
Q. I hand you what purports to be a carbon copy of a letter of May 29, 1914, and heretofore marked for identification Exhibit 4, and ask you whether or not you wrote the letter of which is a true copy.
A. Yes, sir.
Mr. Aldrich: I will ask counsel for the complainant to produce the original.
Mr. Offield: The original can't be found, Mr. Aldrich. If Mr. Larson says he wrote that letter to the Wrigley Company, why, I have no objection to admitting it was received.
Mr. Aldrich: It is very short, if the Court please, I will read it.

"May 29th, 1914. Defendant's Exhibit 14.

"Wm. Wrigley Jr. Company,
Zeno Manufacturing Company,
Chicago.

Gentlemen:—

"We understand you are about to manufacture and wrap chewing gum for a certain concern under labels, bearing brand or copy similar to our registered trade mark. Registered March 26th, 1912, Serial No. 58,239.

Defendant's Exhibit 15.

"We wish to warn you against same and attach herewith copy of labels.

"Yours truly,
"L. P. LARSON JR. COMPANY,
"By L. P. LARSON, *Pres.*"

1452 Mr. Aldrich: I ask that the letter be marked Defendants' **Exhibit 14.**

(Said letter was marked "Deft Ex 14 3/13/17 K. S. H.")

Mr. Aldrich: Q. Did you receive an answer to that letter?

A. Yes, sir, from William Wrigley, Jr.

Q. I hand you what purports to be an answer thereto, and ask you if that is the letter to which you refer.

A. Yes, sir, signed by J. C. Cox.

Mr. Aldrich: The letter is under date of June 2, 1914.

"Messrs. L. P. Larson Jr. Company,
501 North LaSalle Street,
Chicago, Illinois.

Gentlemen:

"Replying to your letter of May 29, I beg to state that you failed to enclose the labels referred to, therefore we do not know whom you are referring to. Kindly send the labels, and oblige

"Respectfully yours,
"WILLIAM WRIGLEY JR. COMPANY
"Per J. C. Cox."

Mr. Aldrich: I ask that the letter be marked Defendants' Exhibit 15.

(Said letter was marked "Deft Ex 15 3/13/17 K. S. H.")

Q. I will ask you whether or not you answered that letter.

A. Yes, sir, I did.

1453 Q. And whether this is a true copy of the answer sent by you.

A. Yes, sir, it is.

Mr. Aldrich: I will read this.

Defendant's Exhibit 16.

"June 3, 1914.

"Messrs. Wm. Wrigley Jr. Co.
5 No. Wabash Avenue,
Chicago, Ill.

Gentlemen:

"Acknowledging your favor of the 2nd inst., we regret the

oversight in not enclosing labels in our letter of the 29th ult. and are attaching same to this correspondence.

"Thanking you for your courtesy, we are

"Yours respectfully,

"L. P. LARSON JR. CO.

"By

*Pres.*

"LPL-W"

Mr. Aldrich: Let that be marked exhibit 16.

(Said letter was marked "Deft Ex 16 3/13/17 K. S. H.")

Q. You wrote that letter?

A. I did.

Q. You may state, Mr. Larson, what labels you enclosed in the last letter referred to.

A. Peptomint and Wintermint labels.

Mr. Aldrich: I understand Mr. Offield's admission as to all of these letters to be the same statement, is it not, that you haven't the originals?

1454 The Court: Well, the evidence shows that they are copies and wrote them; that they are copies of the letters he wrote.

Mr. Offield: If we can't produce the originals, why, we will accept the copies.

Mr. Aldrich: Q. You may state, if you know, who in 1914 was advertising agent of the William Wrigley, Jr. Company.

A. Mr. D'Emo.

Q. Where was his office?

A. In the Kesner Building, corner of Madison and Wabash, right above the general office of the William Wrigley Jr. Company. He was the advertising agent for Spearmint gum.

Q. State whether or not you had any business with him or whether he called on you in the summer of 1914.

A. Mr. D'Emo came over to my office; first called me up and asked if he could have an engagement with me, and I told him I would be glad to see him at any time.

Q. Well, you saw him? I want to be just as brief as I can.

A. Yes.

Q. And what did he secure from you or get from you in the way of copies of your labels and boxes of your gum?

A. He said he wanted to get out a new brand of chewing gum and wanted to sample all my different gums, and I furnished him all my brands of different chewing gums.

1455 Q. Including what?

A. Peptomint and Wintermint, and other side brands we are making.

Q. And when was this with reference to the issue or getting out by the Wrigley Company of the Doublemint package?

A. It was right before the Doublemint package come out, some time before.

Q. In July or August, was it not?

A. That was when the Wrigley package come out.

Q. The Wrigley package came out later, July 28th, but I mean when you met Mr. D'Emo.

A. I met him in the spring of 1914.

Q. Now, when you came to adopt your Wintermint package, Mr. Larson, you may state whether or not you had a conference with Mr. Kittredge.

A. Yes, I went over to R. J. Kittredge's office and told him that I wanted to get out a new package and wanted to get it out so different there couldn't be of any confusion on the market, there wouldn't be anybody bringing a lawsuit.

Q. It was with reference to Mr. Kittredge's testimony—

The Court: Come right to the point.

Mr. Aldrich: I will be as brief as I can. I want to show that Mr. Kittredge advised him at this interview that there was going to be by the Wrigley Company an infringement of his package, and that led to this correspondence.

1456 The Court: Well, what is the materiality of it? Suppose that is all true, what has it got to do with the case?

Mr. Aldrich: Well, all right; I will accept your Honor's suggestion.

The Court: I don't think it has anything to do with the case.

Mr. Aldrich: I will accept your Honor's suggestion.

Q. You may state what, if anything— No, I will drop that whole line now, if the Court please. You may state whether or not at the time you adopted the Wintermint package you believed it to be a new and original package.

A. I did individually, on account of green inside wrappers which Mr. Kittredge told me nobody else had used, that was in December, 1913, at the time he went over to see Mr. Wrigley at the Chicago Athletic Club.

Q. Mr. Larson, have you the advertisements that were issued at the time the preliminary injunction was granted by Judge Carpenter in this court?

A. Yes, sir.

Mr. Offield: I object, your Honor. I think those are entirely irrelevant and immaterial.

The Court: He is just asking if he has them. I don't know yet what he is going to ask.

A. I have.

Mr. Aldrich: Q. And also a copy of Mr. Offield's
1457 letter to the dealers?

A. To May Brothers, in Fremont, Nebraska; yes, sir.

Q. What distribution had been made of Wintermint products prior to July, 1914?

Mr. Offield: I object, your Honor, as entirely immaterial.

The Court: What is the relevancy of it?

Mr. Aldrich: It is relevant in this way, I want to show that it had become an article of commerce.

The Court: You want to show that he had a large business that he was trying to protect; is that it?

Mr. Aldrich: That is one purpose, yes, if the court please.

The Court: Go ahead.

Mr. Aldrich: And I have other purposes also.

A. We had a large business.

The Court: Are there some hidden purposes?

Mr. Aldrich: No, nothing hidden. I have heard of some things being done in secret, good, for instance; but I never before of making gum in secret, as I have in this case.

The Court: Well, we continue to learn.

Mr. Aldrich: Q. How general was the distribution? I want to know, state it in the briefest, shortest manner.

A. We had a general distribution over the United States in almost every state in the Union.

The Court: Which is this, Wintermint?

1458 A. Wintermint.

Mr. Aldrich: The Wintermint package; yes, sir.

Q. And this was prior to July, 1914?

A. Yes, sir.

Q. You were selling it also in Chicago, were you not?

A. Yes, sir; we had city salesmen, people selling all through Chicago here, and ever since.

Mr. Aldrich: I don't think of any other question just now, if the Court please.

The Court: Cross-examine.

*Cross-Examination by Mr. Offield.*

Q. This is Mr. D'Emo that you speak about as having called upon you in the summer of 1914 and secured copies of all of your various labels was the Basil D'Emo that was discharged as advertising manager of the Wrigley Company in 1913, was he not?

Mr. Aldrich: I object to that. There has been no evidence as to his discharge.

The Court: He is asking him whether he was discharged.

A. I never knew of his ever being discharged.

Mr. Offield: Q. Did you know of his being in the employ of the Wrigley Company at the time he called at your office in 1914?

1459 A. He represented so on his bill heads; largest dealers of Spearmint gum.

Q. On his card, you mean?

A. No, on his letterhead.

Q. Letterhead?

A. Yes.

Q. But you knew he was not in the employ of the Wrigley Company when he called upon you in 1914?

A. He gave me so to understand.

Q. That he was or not?

A. He was in their employ.

Q. Was he seeking to obtain the advertising business of the L. P. Larson Jr. Company?

A. He was not.

Q. You mentioned about having seen Mr. Kittredge at the time he went to see Mr. Wrigley at the Athletic Club, as I recollect your testimony.

A. Yes, sir.

Mr. Aldrich: He hasn't said anything about that.

A. Yes, sir.

Mr. Offield: I beg your pardon.

Mr. Aldrich: I asked Mr. Wrigley about it.

Mr. Offield: Q. What was that interview?

A. To get the $10,000 from Mr. Wrigley. Mr. Kittredge told me he was going over after it.

The Court: That was all shut out. I don't care anything about that.

Mr. Offield: I hadn't the faintest idea what that was about.

1460 The Court: I never saw that much money in my life.

Mr. Offield: I hadn't the faintest idea what that interview was about. I was trying to find out.

The Court: I shut that out twice, this is the third time. This time we will shut the door.

Mr. Offield: Q. Now, as to the labels that were enclosed in Defendants' Exhibit No. 16, what were those labels, just counterbands of the two packages?

A. Counterbands and inside wrappers.

Q. And inside wrappers as well. Did the Larson Company ever spend any money in advertising its Wintermint gum, in publicity work?

A. Yes, sir.

Q. About how much in 1914, we will say?

Mr. Aldrich: I object, if the Court please.

Mr. Offield: If the distribution of that gum is an important factor here and the amount of sales he had of it, I would like to know how he got those sales for it.

The Court: The mere fact that you would like to know it doesn't make it material.

Mr. Offield: I know it doesn't, but it has some bearing, I think.

The Court: No, I don't think so.

Mr. Offield: In the reason of the sale of the gum, if they have had distribution there is a reason for it.

The Court: No.

1461 Mr. Offield: I am trying to find out the points of distribution.

The Court: It doesn't make any difference about its methods or advertising, I don't think it is material.

Mr. Offield: I don't, either, unless your Honor is ruling on the quantity.

The Court: If we agree on the proposition why do you object to my ruling?

Mr. Offield: Q. In your letter to the Wrigley Company under date of May 29, introduced as Defendants' Exhibit 14, you notified them that you understood they were about to manufacture and wrap chewing gum for a certain concern under certain labels; what concern was it that you had in mind at the time you wrote that letter?

A. Why, I didn't know. The labels were being printed by Kittredge & Company. When I was over there they told me that Wrigley was getting up a new package and "Look out for him, he is going to imitate your package".

Q. Kittredge told you?
A. R. J. Kittredge himself told me that.
Q. So you didn't know at the time you wrote that letter whether the Wrigley Company was going to get out this package or some other company?
A. He wouldn't show me the wrappers, no, sir.
1462 Mr. Offield : That is all.

*Redirect Examination by Mr. Aldrich.*

Q. You speak of Mr. D'Emo's letterheads, and so forth. I hand you one of them and ask you if that is what you refer to.
A. Yes, sir. On the corner here Spearmint Gum.
Mr. Aldrich: I offer the letter in evidence, if the Court please, as Defendants' Exhibit 17.

Defendant's Exhibit 17.

(Said letter was marked "Deft Ex 17 3/13/17 K. S. H." and is in words and figures as follows:)

1463

B. D'Emo
Telephones
Bell: Randolph 1432
Automatic: 44028
Advertisement Campaigns
In All Lines
5 North Wabash Avenue
Chicago

Including Wrigley's Spearmint Pepsin Gum
Most productive advertising campaign on record
August 3rd, 1914.

Mr. L. P. Larson, Jr.,
L. P. Larson Jr. Company,
501 N. LaSalle Street,
Chicago.

Dear Sir:—
I notice the samples you have left, while smooth and good in quality, have a certain adhesiveness. The teeth seem to stick to the gum. It requires an effort to pull your teeth away from it when chewing the gum.
Can't you send some samples that have not got this unpleasant quality? Please do this at the earliest possible moment, as time is now getting short.

Yours truly,
B D'Emo

P. S. Am awaiting the Aldridge letter.

1464 The Court: Call your next witness.

Mr. Aldrich: I have no other witness unless Mr. Dellenberg is here.

The Court: Is Mr. Dellenberg now present? He is not in the room?

Mr. Aldrich: He isn't, if the Court please.

The Court: Are you through except him?

Mr. Aldrich: Yes, and I will have him here when you open court tomorrow morning.

The Court: How much time do you want for your rebuttal?

Mr. Offield: It will be very short, your Honor. I have Mr. Wrigley I want to put on for just a few questions, and Mr. J. C. Cox.

The Court: An hour?

Mr. Offield: I think I will get through in an hour easy.

The Court: Let us understand ourselves. I am not going to adjourn until I have an agreement.

Mr. Aldrich: I beg your pardon?

The Court: I am not going to adjourn until I have an agreement out of both of you. You have nothing more except Dellenberg?

Mr. Aldrich: That is as I am advised.

Mr. Reed: And these documents that have been identified, they might as well be offered now.

1465 The Court: You may consider them as read in evidence.

Mr. Reed: All documents identified as exhibits, marked for identification, will be considered as read and offered.

The Court: You will not take over an hour and a half?

Mr. Offield: I certainly will not take over an hour and a half. I have one witness. I don't know whether your Honor will want that witness here or not, but it is Mrs. Hayes, mother of Gerald Hayes.

The Court: I don't want Mrs. Hayes, I have never seen her. I don't know whether I want her or not.

Mr. Offield: I don't know whether your Honor will want her testimony to go into this record.

The Court: I don't know.

Mr. Offield: She has been sick in the hospital. I think I can get her down here tomorrow morning. I will endeavor to get her down the very first thing.

The Court: What do you want to prove by her?

Mr. Offield: I want to prove by her that this so-called de-

tective that appeared on the stand here never had any conversation with Gerald Hayes and Gerald Hayes never denied anything he said in his original answer.

The Court: Where is Gerald himself?

Mr. Offield: Gerald himself is in Florida.

The Court: Sojourning in the South?

1466 Mr. Offield: Sojourning with the United States Navy.

The Court: We will adjourn now till tomorrow morning at ten o'clock.

Mr. Aldrich: What is the agreement?

The Court: The agreement is that you are to have no witnesse except Mr. Dellenberg; and the agreement on Mr. Offield's part is that he won't take over an hour and a half on rebuttal.

Mr. Aldrich: When are you going to have us argue the case?

The Court: Just as soon as the evidence is closed.

Mr. Aldrich: All right.

The Court: I would like to finish tomorrow.

Mr. Aldrich: Have you decided how you will limit us about the argument?

The Court: I will give you all the time I have got.

Mr. Aldrich: No one could ask more, I am sure.

The Court: Adjourn court until tomorrow.

Whereupon an adjournment was taken until March 14, 1917, at ten o'clock A. M.

1467

March 14, 1917.
10 o'clock A. M.

Met pursuant to adjournment.

Present as before.

Mr. Reed: The stenographer advises me that she can not find any place where this letter, this R. J. Kittredge letter from L. P. Larson, Jr. Company, about the spearmint wrapper, has been introduced, and I will introduce it now. It was, undoubtedly, introduced, but was omitted in the record. And these additional letters, June 3, May 29 and August 3, 1914, are also introduced. I think they are all in but we will now introduce Exhibits 1 to 17, both inclusive in connection with the deposition of Frank F. Pulver. I think they went in but it is easier to pur them in now.

The Court: Is the witness present?

Mr. Aldrich: Yes, he is.

Mr. Reed: We also introduce the registration of Peptomint, number 85910 and 107,789, they are copies uncertified, and they may be marked Defendant's Exhibits 18 and 19 respectively.

(Letters of June 3, May 29 and August 3, 1914, are Exhibits 16, 14 and 17 in this Record.)

(Exhibits to Pulver's deposition above mentioned are in the record immediately following said deposition of Frank F. Pulver.)

Said Littredge letter is marked Defendants Exhibit 17½ and is in words and figures as follows:

1468 (On Letterhead L. P. Larson Jr. Co.)

Chicago

R. J. Kittredge & Co.
Rec'd May 1 1914 Rec'd
Ans.

R. J. Kittredge & Co., Attention: Mr. Calfield.
Chicago. 81454
Gentlemen:— 81485

Please find attached "Spearmint" wrapper which we will also need together with the "Spearmint" bands you are printing for us now.

Print these wrappers on the same kind of paper as the "Peptomint" wrappers (purple color) as we have decided to use the green paper for "Wintermint" exclusively.

You may enter our order for One Million of these wrappers which we understand makes a run. Black Ink 2¼" x 4"

Yours very truly,
L. P. Larson Jr. Company

Also letter
200 M 3¼ x 2⅝—5 stick Spearmint Bands.
Gold Bronze } Our Buff Plated
Green Ink } Stock

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1469 Said Exhibits 18 and 19 are in words and figures as follows, to-wit:

1470 2-371 No. 8591 C

THE UNITED STATES OF AMERICA

To all to whom these Presents shall come;

This Is To Certify that by the records of the United States Patent Office it appears that L. P. Larson, Jr. Company of Chicago, Illinois, a corporation organized under the laws of the State of Illinois, did, on the 17th day of August, 1911, duly file in said Office an application for Registration of a certain Trade-Mark for Chewing-Gum that it duly filed therewith a drawing of the said Trade-Mark, a statement relating thereto, and a written declaration, duly verified, copies of which are hereto annexed, and has duly complied with the requirements of the law in such case made and provided, and with the regulations prescribed by the Commissioner of Patents.

And, upon due examination thereof, it apearing that the said applicant is entitled to registration of its said Trade-Mark under the law, the said Trade-Mark has been duly Registered to L. P. Larson, Jr, Company, its successors or assigns, in the United States Patent Office, this twenty-sixth day of March 1912.

This certificate shall remain in force for Twenty Years, unless sooner terminated by law.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty-sixth day of March, in the year of our Lord one thousand nine hundred and twelve, and of the Independence of the United States the one hundred and thirty-sixth.

(Seal)

C. C. Billings
*Acting Commissioner of Patents.*

1471 UNITED STATES PATENT OFFICE

L. P. Larson, Jr. Company, of Chicago, Illinois.

Trade-Mark for Chewing-Gum

85,910 Registered Mar. 26, 1912

Application filed August 17, 1911 Serial No. 58,239

Statement

To all whom it may concern:

Be it known that L. P. Larson, Jr. Company, a corporation duly organized under the laws of the State of Illinois, and located in the city of Chicago, county of Cook, in said State, and doing business at No. 29 South Clinton Street, city of Chicago, State of Illinois, has adopted and used the trade-mark shown in the accompanying drawing the words, "Peptomint and "Gum" being disclaimed for chewing gum, in Class No. 46, Foods and ingredients of foods.

The trade-mark has been continuously used in the business of said corporation since July 27th. 1911.

The trade mark is applied or affixed to the goods or to the packages containing the same by placing thereon a printed label on which the trade mark is shown.

L. P. LARSON, JR. COMPANY
By L. P. LARSON, JR.
*Pres.*

TRADE-MARK

Declaration

State of Illinois, } ss.
County of Cook. }

L. P. Larson, Jr. being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes the said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association to the best of his knowledge and belief, has the right to use said trade

mark in the United States, either in the identical form or in any such near resemblance thereof, as might be calculated to deceive; that said trade mark is used by said corpora-
1472 tion in commerce among the several States of the United States; that the description and drawing presented truly represent the trade mark sought to be registered, and that the specimens show the trade mark as actually used upon the goods.

L. P. LARSON, JR.,

Subscribed and sworn to before me a notary public, this 31st day of July 1911

JOHN A MARTINKUS
(L. S.) *Notary Public*

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Copies of this trade-mark may be obtained for five cents each, by addressing the "Commissioner of Patents Washington, D. C."

Defendant's Exhibit 19.

1473 2-371 No. 107789

THE UNITED STATES OF AMERICA,

To all to whom these presents shall come;

This Is To Certify that by the records of the United States Patent Office it appears that L. P. Larson Jr. Company of Chicago, Illinois, a corporation organized under the laws of the State of Illinois, did, on the 8th day of February 1915, duly file in said Office an application for Registration of a certain Trade Mark for Chewing-Gum that it duly filed therewith a drawing of the said Trade-Mark, a statement relating thereto, and a written declaration, duly verified, copies of which hereto annexed and has duly complied with the requirements of the law in such case made and provided and with the regulations prescribed by the Commissioner Of Patents.

And, upon due examination thereof, it appearing that the said applicant is entitled to registration of its said Trade-Mark under the law, the said Trade-Mark has been duly Registered to L. P. Larson Jr. Company, its successors or assigns, in the United States Patent Office, this twenty-eighth day of December, 1915.

This certificate shall remain in force for Twenty Years, unless sooner terminated by law.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washington, this twenty-eighth day of December, in the year of our Lord one thousand nine hundred and fifteen, and of the Independence of the United States the one hundred and fortieth

R. F. WHITEHEAD
(Seal) (Stamp) *Acting Commissioner of Patents.*

1474 UNITED STATES PATENT OFFICE

L. P. Larson Jr. Company, of Chicago, Illinois

Trade-Mark For Chewing-Gum.

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107,789. Registered Dec 28, 1915.

Application filed February 8, 1915, Serial No. 84,375

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Statement

To all whom it may concern;

Be it known that L. P. Larson Jr. Company, a corporation duly organized, existing, and doing business under and by virtue of the laws of the State of Illinois, and having its principal office and place of business at 501 North LaSalle street, in the City of Chicago, in said State, has adopted and used the trade-mark shown in the accompanying drawing, the word "Gum" being disclaimed, for chewing gum in Class 46, Foods and ingredients of foods.

No claim is made to the word Mint except in association with the word Pepto.

This trade-mark has been continuously used by the said corporation since July 27, 1911.

Applicant is the owner of registration No. 85,910.

The trade-mark is applied or affixed to the goods, or to the packages containing the same, by printing the same upon wrappers and boxes used in packing the goods for sale.

L. P. LARSON JR., COMPANY,
By LOUIS P. LARSON, JR.,
*President.*

TRADE-MARK

Declaration

State of Illinois } ss.
County of Cook }

LOUIS P. LARSON, JR., being duly sworn deposes and says that he is president of the corporation the applicant named in the foregoing statement; that he verily be-
1475 lieves that the foregoing statement is true; that he believes the said corporation is the owner of the trade-mark sought to be registered, that no other person, firm, corporation or association to the best of his knowledge and belief has the right to use said trade-mark, in the United States, either in the identical form or in such near resemblance thereto as might be calculated to deceive; that such trade-mark is used by the said corporation in commerce among the several States of the United States and that the description and drawing presented truly represent the trade-mark sought to be registered, and the specimens (or Facsimiles) show the trade-mark as actually used upon the goods.

LOUIS P. LARSON, JR.

Subscribed and sworn to before me, a notary public, within and for said county and State, this 5th day of February, 1915.

G. L. TOALE,
(L. S.) *Notary Public*

Copies of this trade-mak may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

1476 CHARLES E. DELLENBARGER called as a witness on behalf of defendants, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Aldrich.*

Q. State your name to the Court?
A. Charles E. Dellenbarger.
Q. Speak louder, if you will.

A. Yes.
Q. What is your business?
A. Machinist.
Q. And have you a shop of your own?
A. No, not now.
Q. And where are you located, where you work?
A. At present I am employed at Ohio and Oakley streets.
Q. You may state whether at any time you were connected with the Zeno Manufacturing Company, and if so in what capacity?
A. I was employed in there as a machinist
Q. At what time?
A. In 1906.
Q. At what time did you go to work there in 1906?
A. Some time in the fall.
Q. How long were you with them?
A. At that time nine months.
Q. And then were you away for a while?
A. For a few weeks.
Q. How many weeks?
A. I should say five weeks.
Q. What were you doing during the first nine months 1477 of your employment?
A. Machinist in charge of wrapping machines.
Q. Of what?
A. In charge of wrapping machines, wrapping chewing gum.
Q. You may state whether or not they were manufacturing Spearmint gum during the period that you were there?
A. Yes.
Q. And to what extent and how much?
A. I should say—
Q. Speak louder.
A. I should say four batches a month.
Q. And you told me something about the first time they manufactured it there the flavor of it made trouble with the girls; when was that?
A. I should say during the first few weeks I was there.
Q. Had they any gum wrapping machines at that time?
A. Yes.
Q. Or did you make one afterwards?
A. No.
Q. What was the machine that you were working on when you came back?

A. While employed in there the second time I worked on vending machines.

Q. On a vending machine?

A. Yes.

Q. How long were you with them on that occasion?

A. About three months.

Q. And when was the vending machine completed, if at all.

A. This was experimental work, not manufactured.

Q. Not manufactured?

A. No.

1478 Q. Did you complete the vending machine?

A. I wasn't working upon a complete vending machine, only experimenting upon certain parts.

Mr. Aldrich: That is all with this witness.

*Cross-Examination by Mr. Offield.*

Q. You state the Zeno Manufacturing Company was only making about four batches of Spearmint gum per month in 1906; were you there from the beginning of 1906?

A. No.

Q. Throughout the entire year?

A. No, from March.

Q. From March, 1906, not in March. You believe you only made about four batches of Spearmint gum?

A. I have no record. I should say that might have been the average during the time.

Q. Upon what do you base your statement that it might have been the average; did you see the gum being made?

A. No, the only gum that I saw was that that was wrapped on machines in my department.

Q. You didn't see them make a single batch during the month of March or any other month?

A. No.

Q. So you don't know whether they made one batch or ten batches, do you, as a matter of fact?

A. No.

1479 Q. Now, during the course of your business, how do you estimate the quantity of Spearmint gum they might have made in March, 1906? Did you count the labels that went into the various wrapping machines?

A. No, but the wrapping of that gum was done on one certain machine.

Q. The wrapping of Spearmint gum was done on one machine?

A. I think I did it all upon one certain machine we had at that time.

Q. Were you familiar with the hand wrapping department of the Zeno Company at that time?

A. I had nothing to do with it.

Q. Do you know whether they were wrapping Spearmint gum in the wrapping department as well as on the one machine?

A. No.

Q. What was the capacity of the one machine per day?

A. It must have been about six hundred or seven hundred boxes per day.

Q. That one machine would wrap about six hundred or seven hundred boxes a day of Spearmint gum?

A. Yes.

Mr. Offield: That is all your Honor.

*Redirect Examination by Mr. Aldrich.*

Q. Was it a machine that wrapped the individual sticks or was it a machine that put the counter band on?

1480 A. Only individual sticks.

Q. Only the individual sticks. And did they wrap any of their gum in the hand wrapped department, the individual sticks, by hand?

A. I had no way of knowing that.

Q. The gum that was made came to your department to be wrapped so far as you know, did it not?

A. Only that that was to be wrapped upon machines.

Q. And do you know that any of the individual sticks were wrapped other than by the machine?

A. No, I do not.

Mr. Offield: Q. You were not in a position to know whether any other gum was being wrapped except by this machine, were you?

A. No, that was out of my department.

Mr. Offield: That is all.

Mr. Aldrich: That is all, if the Court please. We rest.

The Court: Proceed with your rebuttal.

Whereupon the complainants to further maintain the issues on their part introduced the following evidence in rebuttal.

1481 WILLIAM WRIGLEY, JR., called as a witness in rebuttal on behalf of complainants, having been duly sworn, testified as follows:

*Direct Examination by Mr. Offield.*

Q. Mr. Pulver has stated in his testimony taken in this case that you were just beginning in the gum business around 1896 or a little before that time; I will ask you to state whether or not William Wrigley Jr. & Company had a considerable business in chewing gum in the year 1896 and prior thereto?

A. A very big business.

Q. I show you a contract dated September 15, 1896, between the Zeno Manufacturing Company and William Wrigley, Jr. & Company; I will ask you if this is the original of that contract and if that is your signature at the bottom of the same?

A. That is the original contract and that is my signature, and Mr. Cox's signature.

Q. That is the contract specifies—

Mr. Aldrich: Well, I object, if the Court please.

Mr. Offield: Q. This contract places an order for one hundred and fifty thousand dollars worth of good quality chewing gum for the year immediately following this contract; that is right, is it not?

A. Yes, sir.

1482 Mr. Aldrich: I am objecting, if the Court please.

The Court: Well, I don't see the materiality of it.

Mr. Offield: Q. Is it not a fact that in the year following September 15, 1906, you did purchase from the Zeno Company more chewing gum than is specified in this contract?

A. It is.

Mr. Offield: The contract is offered in evidence and marked Complainant's Exhibit 21.

Mr. Aldrich: Objected to.

The Court: Well, there has been some testimony here seeking to minimize his business.

Mr. Offield: Q. Now, Mr. Pulver has also testified that at the time you had an interview with him somewhere in 1909 you stated to him that you had asked him to keep out of the Grove suit; have you any recollection of making such statement?

A. I am very sure I did not ask him to do so.

Q. There has been introduced in evidence a letter from Basil D'Emo to the Larson Company under date of August 3, 1914. I show you this letter head and ask you if Mr. D'Emo was in your employ prior to—

A. Afterwards, isn't it?

Q. No, prior to August 3, 1914?

A. He was notified we no longer desired his services in April, 1914.

Q. I show you a copy of a letter addressed to Mr. Basil D'Emo under date of April 7, 1914, and ask you to
1483 state whether or not this is a copy of the original letter which you wrote to Mr. D'Emo at that time?

A. That is an exact copy of the letter of that date.

Q. The following instructions as contained in that letter when did Mr. D'Emo cease to be employed by your company in the year 1914?

A. He ceased writing copy at this date but stayed around there about a month later.

Q. By this date you mean the date of April 7, 1914?

A. Yes, sir.

Mr. Offield: The letter shown the witness under date of April 7, 1914, I offer in evidence and ask that it be marked Complainant's Exhibit 22. (Here follows Complainant's Exhibit No. 22, but not copied.)

Mr. Aldrich: I think it is immaterial if the Court please and I object.

The Court: It may go in.

Mr. Offield: That is all.

*Cross-Examination by Mr. Aldrich.*

Q. I omitted to ask you, Mr. Wrigley, what relation Bert Atwater is by marriage or otherwise to Mr. Cox?

A. He son-in-law.

Q. And also I desire to ask you what you did with the Pulver factory when you acquired it?

A. Dismantled it, brought part of it here and junked the rest.

1485 Q. Junked the rest of it?

A. Yes.

Q. You did not continue the business?

A. A very little while.

Mr. Offield: I am making no objection to this examination, your Honor.

Mr. Aldrich: Well, it is only a word that is all.

Mr. Offield: It may be direct examination.

Mr. Aldrich: Did Mr. D'Emo have a contract with you?

A. No, sir, no written contract.

Mr. Offield: That is all Mr. Wrigley.

J. C. COX, called as a witness on behalf of Complainant being first duly sworn testified as follows:

*Direct Examination by Mr. Offield.*

Q. Will you state your name, age, residence and occupation?

A. J. C. Cox; my residence, 935 Sheridan Road, Evanston; age, 43; treasurer of the William Wrigley Jr. Company.

Q. How long have you been connected with the William Wrigley Jr. Company?

A. Since 1911.

Q. Prior to that time with what concern were you connected?

A. The Rubber Paint Company and the Zeno Manufacturing Company.

Q. Were you with the Zeno Manufacturing Company in December of 1904?

1486 A. It was the Rubber Paint Company, yes, sir.

Q. Was there a fire in the factory of the Rubber Paint Company in December of 1904?

A. Yes, sir, a fire that completely destroyed our building.

Q. After that fire state, if you know, whether or not the safes or vaults of the Rubber Paint Company or of the Zeno Manufacturing Company were injured or the contents destroyed by fire?

A. The contents of the safes when they were opened were in very bad condition. That that was near the doors was scorched, and steam had penetrated the safe, and water, so that when the books came out they were all wet and blurred very badly.

Q. Were you present when those safes were opened?

A. Yes, I opened them, one of them.

Q. Were there any records in those safes pertaining to the manufacture of the various brands of gum manufac-

tured by William Wrigley Jr. Company prior to the time of the fire?

A. All our current records were kept in the safe at that time, yes, sir.

Q. You have heretofore testified in the Norris case regarding the copying of certain data from the partly destroyed records found in the safes after the fire. In your testimony in the opposition proceedings in the Norris case—

Mr. Aldrich: Mr. Offield, I beg your pardon for interrupting, but I desire to object to reading from a record to
1487 refresh the witness' recollection. I want his recollection exhausted before that.

Mr. Offield: I will withdraw that question, your Honor.

Q. Were there any books partly destroyed in the fire of December 31, 1914, of which copies were made after the fire?

A. All the books that were needed for immediate use were copied immediately because the books stuck together just like a piece of glue and we worked several nights there making copies of those that were needed for immediate use.

Q. And do you recollect that any copy of any book was made where the Spearmint brand of gum was identified?

A. Yes, sir.

Q. In the copy?

A. The price book was copied.

Q. And what was the contents of the subject matter copied from the original price book into the new price book?

A. The special brands of Wrigley gum that had been used since the start of our business.

Q. And among those special brands transferred from the original book to the new price book was Spearmint included among them?

A. Yes, sir.

Q. Now, what has become of that price book?

A. I haven't seen it since we came over to Wabash Avenue.

Q. You mean since the transfer of the business of the Zeno Company to the Wrigley Company in 1910?

A. I haven't been able to find it.

1488 Q. Have you searched for it?

A. Yes, sir.

Q. As to the so-called vaults that Mr. Constantine has testified to in this case, please state whether or not the Zeno Company had vaults or whether there were merely safes?

A. We had no vaults, they were safes, only two safes.

Q. Where were those safes located?
A. On the first floor in about the center of the building.
Q. And just two safes?
A. I think it was three safes.

*Cross-Examination by Mr. Aldrich.*

Q. And what became of the original book that you have told us about copying something from?
A. All the originals were so badly disfigured and blurred that they were destroyed after the copies were made.
Mr. Aldrich: I think that is all, if the Court please.
Mr. Offield: One more witness, your Honor.

ANNA HAYES, called as a witness on behalf of complainant, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Offield.*

Q. Will you state your name, residence and occupation.
A. Anna Hayes; 2922 Warren Avenue; occupation, I am the mother of the household, I don't know what you 1489 would give as occupation.
Q. Will you please state whether or not you ever met Mr. James McNamara?
A. Never.
Q. Did at any time, a so-called detective come to your house?
A. Yes, he came to the house but I didn't know who he was.
Q. Will you please state, briefly, the incidents in connection with the time the detective came to your house, and the conversation so far as you can recollect.
A. Well, one Sunday morning—
The Court: Speak up so we can hear you.
A. One Sunday morning about 10 o'clock an old gentleman rang the door bell. My daughter answer it. He asked her if she had a brother Gerald; she said yes. "Does he know his way about town?" She said "Yes, he has been going down town for my mother since he was nine years old." Then I came to the door to see what the truble was and this old gentleman asked me where my boy was. I said he was not at home. He says "He is at home." I said "I

beg your pardon, he is not at home." And with that he put his foot against the door so that I couldn't close it. I asked him what he wanted. He said he came to see my boy. "Well," I said. "He is at church, when he comes home you may see him." In the meantime he came along the street and I called him up on the steps and he says "Young
1490 man, who hired you to go out and buy gum for Wrigley." He says "I wont tell you." And I spoke to my boy and asked him if he didn't think it was better to give the man's name. He said "No, I will never give it." So he was inclined to want to punish my boy right then and there he got so angry. Other than that I remember nothing further only there was a lady sat down at the bottom of the steps and took note of what he had said. There was no affidavit nor no question asked other than that, who was the man that hired him.

Q. To your knowledge did your boy Gerald Hayes ever see this James McNamara after that one instance?

A. Never. He says in a letter that he has written, he doesn't remember—

Mr. Aldrich: I object to that, Mrs. Hayes.

The Witness: Pardon me.

Mr. Aldrich: I object.

Mr. Offield: Never mind that Mrs. Hayes.

Q. Where is your boy at the present time?

A. He is in the navy.

Q. How long has he been in the navy?

A. A year and three months.

Q. Do you know by whom he was employed to purchase chewing gum?

A. I do.

Q. By whom?

1491 A. Mr. George Wilkins called him up. Shall I tell it?

Mr. Offield: Certainly.

Mr. Aldrich: No, I object.

The Court: Why tell it all, she has answered the question.

Mr. Offield: That is all.

Mr. Aldrich: No cross examination.

The Court: Call your next witness.

Mr. Offield: That is all, your Honor.

The Court: You may proceed with the argument.

Which was all the evidence offered either party on the trial of said cause.

1492 The Court: Well, I am going to dismiss the bill in both cases. Now, this counter-claim, I don't think there is any more in the counter-clam than there is in the bill. I am going to dismiss the counter-claim also.

Mr. Reed: On that point, your Honor, we have simply this to say, there is no evidence of confusion. The bill was based on the sworn allegation that those two packages would confuse.

The Court: Yes. The Court cannot protect a man who will buy Wintermint for Spearmint, when it is written in plain English on each of them.

Mr. Reed: Not Spearmint, your Honor, Double Mint.

The Court: Double Mint, I mean. I haven't time to do that.

Mr. Reed: I want to suggest just this one thing, your Honor, and then I am through: There was the direct proof that was practically undenied that after the Wintermint package was on the market the label was sent to the defendant and then defendant came on the market afterward with the Double Mint.

The Court: That is true.

Mr. Reed: And that showed the fraud.

The Court: Oh, no.

Mr. Reed: If their charge in their bill is right.

The Court: Oh, well, it isn't. I am against them 1493 on that. Which case has got the counter-claim in?

Mr. Aldrich: The second case, 488.

The Court: 488, bill dismissed, counter-claim also dismissed, costs to the complainant. The other case, bill dismissed for want of equity, cost to the complainant.

Mr. Aldrich: They have got an injunction against us, if the Court please.

The Court: Do you want it dissolved?

Mr. Aldrich: Of course the injunction should be dissolved and we should have a reference for the damage we have suffered.

The Court: Don't you understand that when a case is dismissed the injunction is dissolved?

Mr. Aldrich: Yes, I do understand that, but they have had us under injunction for all these years.

The Court: You are out now.

Mr. Aldrich: I understand I am.

1494 The following documents were identified by witnesses and marked for identification, but not formally offered in evidence:

1495 DEFENDANTS' EXHIBIT 8, FOR IDENTIFICATION.

(Envelope:)

After 10 days, return to
Albert H. Smith
200 N. Robinson St.
Los Angeles, Cal.

(Canceled United States postage stamp)
(Los Angeles Cal)
( Feb 15 1917 )
( 7-PM )

Chas. H. Aldrich Esq.
1039 Rookery Bldg.
Chicago,
Ill.

1496 Chicago, February 7, 1917.

Albert H. Smith, Esq.,
Los Angeles, Calif.,

Dear Sir:—

I understand that you were formerly connected with Wm. Wrigley Jr. & Co. or Wm. Wrigley Jr. Co., as a sales agent and perhaps in other capacities, and from such connections are in a position to know when Mr. Wrigley first had manufactured for him by the Zeno Manufacturing Company or the Rubber Paint Company the brand of gum known as Spearmint Gum. The occasion for making this inquiry of you is as follows:

In the autumn of 1911, Wm. Wrigley Jr. Co. brought a suit in the Federal Court here in Chicago against the L. P. Larson Jr. Co., alleging that a brand of gum put out by L. P. Larson Jr. Co., known as "Peptomint", was an infringement of the trade dress of the Wrigley Spearmint brand. It was alleged that independently of the trademark consisting of the spear which, as you will remember, was applied for in April, 1907, the Spearmint gum had from 1892, or thereabouts, been dressed, the individual sticks with pink wrappers, five sticks held together by a counterband of white paper upon which was the spear with the word "Spearmint" thereon, with the

word "Wrigley's" in red letters above, and "Original
1497 Pepsin Gum" below the work "Sparmint" and the bar of the spear also in red letters, thus giving a general trade dress of pink for the individual sticks and red, white and green for the counterband. It was claimed that the Larson "Peptomint" package infringed this trade dress, which Wrigley alleged he had used continuously from 1892 to the date of the filing of his suit.

A preliminary injunction was issued against the Larson Company and later Mr. Frank F. Reed and myself came into the case and upon investigation found:

That Mr. Wrigley had not manufactured Spearmint gum from 1892 continuously, as he alleged, but had commenced its manufacture in 1906, and his advertising campaign in 1907. He may have manufactured a batch or so of Spearmint in 1903 or 1904, but we have as yet no reliable evidence that it was dealt in commercially until 1906.

Investigation also disclosed that the Wrigley trade dress, with the exception of the spear head, was practically a reproduction of the trade dress of the spearmint gum manufactured by F. F. Pulver, of Troy, New York, from 1891 to 1901, and from 1901 on to 1913 by the Di-Gesto Company, of Rochester, N. Y. We learned that Mr. Wrigley had brought suit against F. F. Pulver, Di-Gesto Company, Continental Vending Company, both in the Southern District and the Western District of New York. The cause had been put at issue and a
1498 large amount of testimony taken. When it became so apparent to Wm. Wrigley Jr. Co. and the men controlling it that Pulver had continuously used the trade dress, a settlement was made with Pulver, who was the owner of the entire capital stock of the companies named with him as defendants, by which Wrigley paid Pulver $100,00 in cash and gave him five notes of $30,000 each, due on the first days of January, 1914, 1915, 1916, 1917 and 1918. The testimony that had been taken in these cases was, of course, suppressed, or not filed with the clerk of the court, as the U. S. Statute provides.

In 1913, L. P. Larson Jr. Co. were advised by a man who ought to know what he was saying, that Wm. Wrigley Jr. Co. intended to infringe the Larson brands, or trade-marks, and to prevent any such infringement Mr. Larson sent to Wm. Wrigley Jr. Co. copies of his registered brands. Larson put upon the market in November or December 1913, a brand called "Wintermint", the individual sticks of which were

dressed in green paper and the counterband following closely his Peptomint label, with the substitution of the word "Wintermint" in place of "Peptomint". He marketed this quite extensively through many of the states in January and February, 1914, and in February of that year registered the Wintermint trade dress and name, which was allowed and he received his certificate July 21, 1914.

1499 In October or November, 1914, Mr. Wrigley put out his "Doublemint" brand, dressing the individual sticks in green paper and simulating the Larson package as closely as he could, and then brought a suit in the Federal Court to enjoin the "Wintermint" brand on the ground that he had brought out the Doublemint giving it a peculiar trade dress, first conceiving the idea July 28, 1914, and registering such brand in November, 1914.

We promptly filed an answer and a crossbill, or counterclaim, alleging our priority as herein stated.

These two suits are consolidated and will be tried together on March 12th next. With our counterclaim in the last named suit we filed interrogatories with reference to the Pulver litigation, and the court finally compelled them to produce the evidence taken in that litigation.

Upon the settlement which I have stated, the Pulver factory was dismantled and the goods shipped to Mr. Dallenbarger in Chicago for disposition.

We would like to arrange with you, if possible, to come to Chicago and testify to the facts within your knowledge as to the origination of the brand named "Spearmint", the adoption of the trade dress, your knowledge of the Pulver package, if you had any such knowledge, etc. We, of course, want

1500 nothing but the truth, which we think Mr. Wrigley and his associates and carefully avoided in the cases heretofore filed by them, having sought to move back the date of the adoption of the trade dress from time to time as the exigencies of the case required.

Another question that is important in connection with the case is whether or not at the fire of the Rubber Paint and Zeno Companies' building on December 4, 1904, the contents of the vaults and safes were destroyed. Mr. Wrigley, A. G. Cox, Buck, and perhaps others, have testified on three or four occasions that they were, but we have the testimony of witnesses who saw the safes opened up, had to do with the books and were connected with the company at that time and for a long time thereafter, who say that they were not destroyed,

but that they were simply water-soaked and in some instances the edges charred, but that there was no such destruction as to prevent the Zeno Manufacturing Co. from producing evidence of the manufacture of Spearmint Gum prior to 1904 if in fact any such gum had been manufactured other than experimental lots.

I have troubled you with this long account of the litigation between my clients and the Wrigley people because I wish to have a conference with you and arrange for your presence here on March 12th.

Will you kindly write me on receipt of this the
1501 substance of your recollection upon the subject, and whether you could be induced to come here at that time, and oblige

Yours very truly,

CHA-L.

1502 DEFENDANT'S EXHIBIT 2, FOR IDENTIFICATION.

(On letterhead Wm. Wrigley Jr. and Co.)

Chicago, 10/1/06.

JHP. A. S.
Mr. P. J. Cassidy,
Neddo Hotel,
Norfolk, Va.

Dear Sir:—

Your favors of the 28th and 29th ults., at hand and noted. Congratulate you on the very nice bunch of orders you got out of Richmond. This is the best business we have ever done here. Think you had better conclude to put this town and vicinity on your list in the future.

We will pack some signs with every order that goes out, so that your customers will have more or less advertising matter. We note that you state you send 20 Shares from Richmond. We only received 19. Thought possibly you made a mistake in the count.

We will be very careful on the business in Richmond, as we would like to get them well started there.

In regard to the confectionery wagons, will say that we have tried this game before, and certainly think that it is absolutely

worse than useless; it does not reduce any business at all.
1503 The only way, in our opinion, is to throw in something extra to the retailer, to make him push it. We know of no other way. Bill boards do not seem to produce any effect whatever.

Respectfully yours,
WM. WRIGLEY JR. & CO.

1504 DEFENDANTS' EXHIBIT 3, FOR IDENTIFICATION.

Wm. Wrigley Jr.
Chicago
Juicy Fruit
Eastern Office
226 N. Fourth St.
Philadelphia

Wm. Wrigley Jr. & Co
Manufacturers of
Chewing gum.

Wm. Scatchard, Jr.
Philadelphia
Wrigley's Pepsin
Chewing Gum
1 Gr. Pepsin
Wm. Wrigley Jr. Co.
Chicago.

Originators of
Rapid selling premium Assortments.
Office & Warehouse 85 & 87 Kinzie Street
Chicago, 4-15-95

Dictated by W. W. Jr. Steno H.
Mr. Jabez Gorham,
Ft. Wayne, Ind.
Dear Sir:—

We have yours favors of the 14th inst with expense account. The orders during the week we must say were very satisfactory and better than we expect you to do with a new line.

Let us know on receipt of this where we can ship you some more advertising matter by freight, and about when you will need some more money. It would be well if you would go to "General delivery" in most of the towns where you did not name a hotel so that we can write you once in awhile if we see fit.

We have no knife sample cases on hand just now but will have one made for you.

Yours truly
WM. WRIGLEY JR. & CO.

1484 DEFENDANT'S EXHIBIT 9, FOR IDENTIFICATION.

(Defendant's Exhibit 7, is hereto attached but not copied.)

Factories
Long Beach
San Diego

Southern Reduction Company
Marsh-Strong Building
Los Angeles

Feb. 15th, 1917.

Chas. H. Aldrich
1039 Rookery Bldg.,
Chicago, Ill.
Dear Sir:—

Your favor of the 7th inst. at hand and fully noted. In reply would say that I was present when the safes were opened after Zeno Mfg. Co. fire and can verify your information as to the condition of the books, etc.

I had entire charge of everything except finances and Chicle importing, in the business of the Zeno Mfg. Co., and the Wrigley Assortments for years and bought all printing from 1893 until I came to California and engaged in independent business.

I shall be glad to be of assistance to you with the idea that I might advance an action I contemplate on my own account. I designed the vending machines now used by the Zeno Mfg. Co. and as a means of covering our business arrangements at the time, the patents were taken in
1505 the name of the workmen who perfected the ideas and an assignment and contract was executed by which the Zeno Mfg. Co., had the patent rights east of Denver and I had the exclusive rights in the U. S. from Denver west during the life of the patent:

I began business in California buying brande of my own from Zeno under contract and after I had used a thousand machines and been in business about two years, they invaded this territory and met my protest with a withdrawal of credit which put me out of subiness. They have since operated the machines thru out the west, infringing on my exclusive rights under the contract.

I gave them notice several years ago thru W. C. Rigby of

Chicago, who thought I had a case that I should commence action for damages and an accounting and only my weak financial condition, of which they were well aware, prevented my doing so.

The point of this statement is to explain that I am inclined to assist your case with the idea of using the opportunity to take legal action myself if we are mutually satisfied that you can get results that will be worth while.

Altho Mr. Wrigley controlled the Zeno, I don't think he ever knew the nature of my contract for which A. G. Cox and and Joy were responsible and he also has probably been restrained from informing me of this infringement.

1506 troubles by the fact that my knowledge was of vital consequence in the matter and their ruthless action toward me might have started something unpleasant.

I have had it in mind to look him up at Pasadena to be certain of his attitude but want to be prepared to go thru with it to legal action if I start anything.

I am sorry that some of the possible evidence is not just what you would wish except about the condition of the books. But I can possibly do more good in finding the weal points in their evidence and getting favorable evidence for you than by direct testimony and I would not want to take the stand against them on minor details.

The style of wrapping of the Wrigley Spearmint package, was first in tinfoil and pink individual-stick wrappers were not used until later.

I regret that the date you name is so near at hand for it may be almost impossible for me to get away and I should like to know at once just when you want me to arrive and whether any wairing would be involved. I appreciate that several days in advance might be desirable to find some witnesses and work up the case but I have five factory plants here in the business in which I am interested, which require my attention and would not be able to stay there over a week at most.

1507 In regard to expenses or basis or reimbursing me for time, etc. would think I would undertake to make the trip for $500 if you really need me.

Very truly yours,

(Signed) ALBERT H. SMITH.

1508 DEFENDANTS' EXHIBIT 10, FOR IDENTIFICATION.

February 20th, 1917.

Mr. Albert H. Smith,
201 North Robinson Street,
Los Angeles, California.
Dear Sir:

I have your letter of the 15th instant and note contents. You do not state therein what your recollection is as to when Wm. Wrigley Jr. & Company or Wm. Wrigley Jr. Company commenced the manufacture and distribution of spearmint gum. No waiting would be involved in your coming but I would not want to recommend to my client that he go to any expense in connection with your coming unless I knew what your testimony would be with reference to the question above indicated.

Your statement of the patent right matter would, as you state it, give you a perfectly good cause of action, and it seems to me that you would find it to your interest to come here on that matter. My client, however, would without question be willing to contribute to your expenses here and return did he know what your testimony would be, as above stated.

I am

Very truly yours

CHA
AD

1509 * * * Nos. 30,563 and 488 * * *

It is hereby stipulation between the respective parties to the above entitled causes that the above and foregoing is a full and complete record of all the evidence offered and received by the court, either oral or by deposition, on the trial of said causes.

JAMES R. OFFIELD
*Solicitor for Complainant.*
CHARLES H. ALDRICH
FRANK F. REED
EDWARD S. REGEN
*Solicitors for Defendants.*

The above and foregoing record is a full and complete statement of all the evidence given and received in said consolidated causes.

ALBERT B. ANDERSON
*Judge.*

1510 Northern District of Illinois } ss.
Eastern Division. }

I, T. C. MacMillan, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify that I herewith transmit to the United States Circuit Court of Appeals for the Seventh Circuit, the true and original Statement of Evidence, filed in this court, in the cause entitled, Wm. Wrigley Jr. Company, vs. L. P. Larson Jr. Company and L. P. Larson, No. 30563 and Wm. Wrigley Jr. Company vs. L. P. Larson Company, No. 488.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this nineteenth day of May, 1917.

T. C. MACMILLAN
(Seal) *Clerk.*

(Endorsed) Filed May 10, 1917. T. C. MacMillan, Clerk.

173 And afterwards on, to wit, the 14th day of March, 1917 this matter coming on to be heard, the following order was entered by the Court: Entered Mar. 14, 1917.

174 • • • No. 30,563 • • •

Wednesday, March 14, 1917

Present: Honorable Albert B. Anderson, Judge of said Court.

Now come the parties by their respective solocitors and the trial of this cause is resumed, evidence on behalf of the respective parties is heard and concluded and arguments of counsel, and the Court being now fully advised in the premises,

It is Ordered, Adjudged and Decreed that the bill of complaint be and the same is hereby dismissed for want of equity and that the said defendant have and recover of the plaintiff its costs herein to be taxed and that execution issue therefor.

Filed Mar. 14, 1917.

175 And afterwards on, to wit, the 14th day of March, 1917 this matter coming on to be heard, the following order was entered by the Court:

176 • • • No. 488 • • •

Wednesday, March 14, 1917.

Present: Honorable Albert B. Anderson, District Judge.

Now come the parties by their respective solicitors and the trial of this cause is resumed, evidence on behalf of the respective parties is heard and concluded and arguments of counsel, and the Court being now fully advised in the premises,

It is Ordered, Adjudged and Decreed that the counterclaim of the defendant be and the same is heerby dismissed for want of equity, and that the bill of complaint be and the same is hereby dismissed for want of equity and that the defendant have and recover of the plaintiff its costs herein to be taxed and that execution issue therefor.

Filed Mar. 26, 1917.

177 And on to-wit: the 26th day of March, A. D. 1917, there was filed in the Clerk's office of said court a certain Assignment of Errors, in words and figures following to-wit:

178 • • • No. 488 • • •

ASSIGNMENT OF ERRORS.

Now comes the defendant and counterclaimant in the above entitled cause and files the following assignment of errors, upon which it will rely upon its prosecution of the appeal in the above entitled cause from the decree made by this Honorable Court on the 14th day of March, A. D. 1917:

I.

That the United States District Court, for the Northern District of Illinois, Eastern Division, erred in dismissing the counterclaim interposed by the defendant and appellant in said cause.

II.

That the Court erred in disregarding the admission of the complainant's bill, defendant's answer and counterclaim and the evidence adduced as to the confusion between the complainant's "Doublemint" package and defendant's "Wintermint" package and the evidence adduced in support of
179 the fact of such confusion.

III.

That the Court erred in refusing to find for the above named defendant and counterclaimant that said "Doublemint" package infringed counterclaimant's "Wintermint" package and constituted unfair trade on the part of said complainant, and denying to said counterclaimant the relief prayed for in said counterclaim.

IV.

That the said Court erred in refusing to find that counterclaimant was entitled to the relief prayed for and that the original complainant in said suit had wilfully and recklessly put out said "Doublemint" package for the purpose of injuring the counterclaimant and taking away its trade and that said complainant had entered upon said conduct with full notice of the counterclaimant's rights to said trade dress and priority in the use thereof.

Wherefore the appellant prays that said decree dismissing said counterclaim for want of equity be reversed and that said District Court, for the Northern District of Illinois, Eastern Division, be ordered to enter a decree reversing the decision of the lower Court in said cause.

(Signed) CHARLES H. ALDRICH
FRANK F. REED and
EDWARD S. ROGERS,
*Solicitors for Appellant.*

(Endorsed) Filed Mar. 26, 1917. T. C. MacMillan, Clerk.

180 And on to-wit: the 28th day of April, A. D. 1917, there was filed in the Clerk's office of said court a certain Notice, Petition for Appeal, Assignment of Errors, and Order entered thereon, in words and figures following to-wit:

181 * * * No. 30,563 * * *

NOTICE

To Charles H. Aldrich, Esq. 209 South LaSalle Street, Chicago, Illinois.

You are hereby notified that I have this day sent to the Honorable Albert B. Anderson, at Indianapolis, Indiana, a petition for appeal, assignment of errors and order in the above entitled cause, copies of which are handed you herewith.

JAMES R. OFFIELD
*Solicitor for Complainant.*

Received copies of the above mentioned petition for appeal, assignment of errors and order, this 28th day of April, A. D. 1917.

CHARLES H. ALDRICH
FRANK F. REED &
EDWARD S. ROGERS
*Solicitors for Defendant.*

To the Honorable Albert B. Anderson, District Judge.

182 * * * No. 30,563 * * *

The above named Wm. Wrigley Jr. Company, feeling aggrieved in the decree rendered and entered in the above entitled cause on the 14th day of March, A. D. 1917, dismissing complainant's bill of complaint for want of equity, does hereby appeal from said decree to the Circuit Court of Appeals, for the Seventh Circuit, for the reasons set forth in the Assignment of Errors filed herewith, and it prays that its appeal be allowed and that a citation be isued, as provided by law, and that a transcript of the record, proceedings and documents, upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals, for the Seventh Circuit, sitting at Chicago, under the rules of such Court in such case made and provided.

And your petitioner further prays that the proper order relating to the required security to be required of it be made.

And so your petitioner will ever pray.

WM. WRIGLEY JR. COMPANY,
*Petitioner,*
By JAMES R. OFFIELD
*Solicitor for Petitioner.*

183 * * * No. 30,563 * * *

## ASSIGNMENT OF ERRORS.

Now comes the complainant in the above entitled cause and files the following assignment of errors upon which it will rely upon its prosecution of the appeal in the above entitled cause from the decree made by this Honorable Court on the 14th day of March, 1917:

1. That the United States District Court, for the Northern District of Illinois, Eastern Division, erred in dismissing complainant's bill of complaint in said cause.

2. That the Court erred in refusing to find for the above named complainant that said defendant's carton and package infringed complainant's carton and package and constituted unfair trade on the part of the defendant, and denying to said complainant the relief prayed for in said bill of complaint.

Wherefore the appellant prays that said decree dismissing said bill of complaint for want of equity be reversed and that said District Court, for the Northern District of Illinois Eastern Division, be ordered to enter a decree reversing the decision of the lower Court in said cause.

JAMES R. OFFIELD
*Solicitor of Appellant.*

184 * * * No. 30,563 * * *

On motion of James R. Offield, Esquire, solicitor for complainant in the above entitled cause, It Is Hereby Ordered that an appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the order and decree of this Court, dismissing the bill of complaint of said petitioner and complainant, be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings be forthwith transmitted to the United States Circuit Court of Appeals, for the Seventh Circuit.

It Is Ordered that the bond on appeal be fixed in the sum of Five Hundred Dollars ($ ).

Dated April 28th, 1917.

ALBERT B. ANDERSON,
*Judge.*

Endorsed: Filed April 25 1917

185 And on to-wit: the 9th day of May, A. D. 1917, there was filed in the Clerk's office of said court a certain Petition, Assignment of Errors, and order entered thereon in words and figures following to-wit:

186 * * * No. 488 * * *

To The Honorable Albert B. Anderson, District Judge.

The above named Wm. Wrigley Jr. Company, feeling aggrieved in the decree rendered and entered in the above entitled cause on the 14th day of March A. D. 1917, dismissing complainant's bill of complaint for want of equity, does hereby appeal from said decree to the Circuit Court of Appeals, for the Seventh Circuit, for the reasons set forth in the Assignment of Errors filed herewith, and it prays that its appeal be allowed and that a citation be issued, as provided by law, and that a transcript of the record proceedings and documents, upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals, for the Seventh Circuit, sitting at Chicago, under the rules of such Court in such case made and provided.

And your petitioner further prays that the proper order relating to the required security to be required of it be made.

And so your petitioner will ever pray.

WM. WRIGLEY JR. COMPANY
*Petitioner*
By JAMES R. OFFIELD
*Solicitor for Petitioner*

187 * * * No. 488 * * *

## ASSIGNMENT OF ERRORS.

Now comes the complainant in the above entitled cause and filed the following assignment of errors upon which it will rely upon its prosecution of the appeal in the above entitled cause from the decree made by this Honorable Court on the 14th day of March, 1917:

1. That the United States District Court, for the Northern District of Illinois, Eastern Division, erred in dismissing complainant's bill of complaint in said cause for want of equity.

2. That the Court erred n refusing to find for the above named complainant that said defendant's package infringed complainant's "Spearmint" package and constituted unfair trade on the part of the defendant, and denying to said complainant the relief prayed for in said bill of complaint.

Wherefore the appellant prays that said decree dismissing said bill of complaint for want of equity be reversed and that said District Court, for the Northern District of Illinois, Eastern Division, be ordered to enter a decree reversing the decision of the lower Court in said cause.

JAMES R. OFFIELD
*Solicitor for Appellant.*

(Endorsed) Filed May 9, 1917. T. C. MacMillan, Clerk.

188 • • • No. 488 • • •

On motion of James R. Offield, Esquire, solicitor for complainant in the above entitled cause, It Is Hereby Ordered that an appeal to the United States Circuit Court of Appeals, for the Seventh Circuit, from the order and decree of this Court, dismissing the bill of complaint of said petitioner and complainant, be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings be forthwith transmitted to the United States Circuit Court of Appeals for the Seventh Circuit,

It Is Further Ordered that the bond on appeal be fixed in the sum of Five Hundred Dollars ($500.00).

Dated May 9, 1917.

ALBERT B. ANDERSON
*Judge.*

May 9 1917

189 And on to-wit: the 10th day of May, A. D. 1917, there was filed in the Clerk's office of said court a certain Stipulation, in words and figures following to-wit:

190 • • • Nos. 30,563 and 488 • • •

Filed May 10, 1917.

## STIPULATION.

It Is Hereby Stipulated between the respective parties hereto that the two causes shall be consolidated and a joint record prepared, and that the transcript of the evidence, in narrative form and condensed as prescribed by Equity Rule 75, heretofore lodged in the Clerk's office at the time of filing of the praecipe in Equity No. 488, shall stand and be considered as transcript of the evidence in narrative form in Equity No. 30,563, and that the two causes, the Court of Appeals consenting, shall be tried jointly; that all exhibits received in evidence upon the trial of the above entitled causes, shall be attached to and filed with a verbatim report of the evidence received in said causes, avoiding duplications, and that said full report of the evidence shall be certified by the Honorable Albert B. Anderson, before whom said causes were tried, he consenting thereto, and remain on file with
191 the Clerk of the District Court and be by him sent to the Court of Appeals upon the hearing of the appeals in said causes; and that no exhibits need be included in the transcript of the record for the appeals in said causes.

This stipulation is made because of the difficulty of duplicating many of the exhibits and to avoid the cost of having the same reproduced.

This stipulation to be printed in the transcript of the record in said causes.

(Signed) JAMES R. OFFIELD,
*Solicitor for Complainant.*
(Signed) CHARLES H. ALDRICH
FRANK F. REED
(Signed) EDWARD S. ROGERS
*Solicitors for Defendants and Counter-claimant.*

(Endorsed) Filed May 10, 1917. T. C. MacMillan, Clerk.

192 And on to-wit: the 10th day of May, A. D. 1917, there was filed in the Clerk's office of said court a certain Stipulation, in words and figures following to-wit: Filed May 10, 1917.

193 • • • Nos. 30,563 and 488 • • •

STIPULATION.

It Is Hereby Stipulated by and between the parties to the above entitled causes, by their respective solicitors, that the time for filing the praecipe and transcript of the record in the above entitled causes is extended to May 10th, 1917.

JAMES R. OFFIELD
*Solicitor for Complainant.*
CHARLES H. ALDRICH
F. F. REED and
EDWARD S. ROGERS
*Solicitors for Defendants and Counter-claimant.*

(Endorsed) Filed May 10, 1917, T. C. MacMillan, Clerk.

194 And afterwards on, to wit, the 11th day of May, 1917 this matter coming on to be heard, the following order was entered by the Court: Entered May 11, 1917.

195 • • • Nos. 30,563 and 488 • • •

Friday, May 11, 1917

Present: Hon. Albert B. Anderson. Judge of said Court.

ORDER.

It appearing to the court that the exhibits in said cause cannot be reproduced or duplicated, without great cost in the printed transcript of the proceedings, It Is Ordered, the respective parties by their solicitors having by stipulation in writing so requested, that the complete record containing in itself all of the papers, exhibits, depositions, etc., in said cause, shall upon the hearing of the appeals in these consolidated causes be lodged with the Clerk of the Court in the

Court of Appeals, for the consideration of the said Court of Appeals in connection with the transcript of the proceedings.

ALBERT B. ANDERSON
*Judge*

May 11, 1917
O. K.
JAMES R. OFFIELD
CHARLES H. ALDRICH
FRANK F. REED
EDWARD S. ROGERS
*Solic. for Appellant.*

Entered May 14, 1917.

196 And afterwards on, to wit, the 14th day of May, 1917 this matter coming on to be heard, the following order was entered by the Court:

197 • • • No. 488 • • •

Monday, May 14, 1917.

Present: Hon. George A. Carpenter, Judge of said Court:

Now comes Wm. Wrigley Jr. Company, the appellant herein, by its solicitors and presents its bond in the sum of Five hundred dollars ($500.00) to the Court for approval and it appearing that the same is regular in form, properly conditioned, for the penal sum fixed by the Court and that the sureties thereon are sufficient and ample security therefor, it is ordered by the Court that said bond be and the same is hereby approved.

Entered Sept. 30, 1918.

198 And afterwards on, to wit, the 30th day of September, 1918 this matter coming on to be heard, the following order was entered by the Court:

199 • • • Nos. 30,563 and 488 • • •

Monday, September 30, 1918.

Present: Hon. George A. Carpenter, Judge of Said Court:

Upon motion of the defendant, leave is hereby granted said defendant to file Mandate of the United States Circuit Court

of Appeals for the Seventh Circuit and the above entitled cause is hereby continued until October 4, for the entry of decree.

200 And on to-wit: the 30th day of September, A. D. 1918, there was filed in the Clerk's office of said court a certain Mandate, in words and figures following to-wit: Filed Sept. 30, 1918.

201 United States of America, } ss:

The President of the United States of America, To the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division. Greeting:

(Seal)

Whereas, lately in the District Court of the United States for the Northern District of Illinois, before you, or some of you, in a cause between Wm. Wrigley Jr. Co. and L. P. Larson Jr. Co. the Decree entered on the fourteenth day of March, 1917, is in the words and figures following, to-wit;—

Now come the parties by their respective solicitors and the trial of this cause is resumed, evidence on behalf of the respective parties is heard and concluded and arguments of counsel, and the Court being now fully advised in the premises.

It is Ordered, Adjudged and Decreed that the counter-claim of the defendant be and the same is hereby dismissed for want of equity, and that the bill of complaint be and the same is hereby dismissed for want of equity and that the defendants have and recover of the plaintiff its costs herein to be taxed and that execution issue therefor.

as by inspection of the transcript of the record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Seventh Circuit by virtue of an appeal agreeably to the act of Congress, in such case made and provided, fully and at large appears.

202 And Whereas, in the term of October, in the year of our Lord one thousand nine hundred and seventeen, the said cause came on to be heard before the said United States Circuit Court of Appeals for the Seventh Circuit, on the said transcript of record, and was argued by counsel:

On Consideration Whereof, It is now here ordered, adjudged and decreed by this Court that the part of the decree of the said District Court that dismisses the counter-claim of L. P. Larson Jr. Company be, and the same is hereby reversed with costs; and that this cause be, and the same is hereby remanded to the said District Court with the direction to enter an injunction and order an accounting. Tuesday, July 30, 1918.

And further that the Appellant, L. P. Larson Jr. Company, recover against the Appellee, William Wrigley Jr. Company the sum of One Hundred Forty-three & 80/100 Dollars ($143.80) for its costs herein expended with direction to award execution therefor.

You, therefore, are hereby commanded that such further proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said Decree notwithstanding.

Witness the Honorable Edward D. White, Chief Justice of the United States, the fourth day of September in the year of our Lord one thousand nine hundred and eighteen.

EDWARD M. HOLLOWAY.
*Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

• • • No. 488 • • •

Mandate Filed Sep. 30 1918 at ..... O'Clock .....M. T. C. MacMillan Clerk.

203

Office of the Clerk
UNITED STATES CIRCUIT COURT OF APPEALS
at Chicago
Wm. Wrigley Jr. Co.
To Edward M. Holloway, Clerk, Dr.
Bill of Costs

In Cause No. 2498 — L. P. Larson Jr. Co. *vs.* Wm. Wrigley Jr. Co. — October Term, 1917

| | Cost of each item | |
|---|---|---|
| Docketing a case and filing the record..... | $5 00 | 5 00 |
| Entering an appearance..... | 25 | 1 00 |

| | | |
|---|---|---|
| Transferring a case to the printed calendar | 1 00 | 1 00 |
| Entering a continuance | 25 | |
| Filing a motion, order, or other paper | 25 | 3 50 |
| Entering any rule, or making or copying any record or any other paper, for each one hundred words | 20 | |
| Argument | 20 | 20 |
| Order | 20 | 60 |
| Entering a judgment or decree | 1 00 | 1 00 |
| Every search of the record of the court and certifying the same | 1 00 | |
| Affixing a certificate and a seal to any paper | 1 00 | |
| Receiving, keeping, and paying money, in pursuance of any statute or order of court, one per cent on the amount so received, kept, and paid | | |
| Preparing the record for the printer, indexing the same, supervising the printing, and distributing the copies, for each printed page of the record and index | 25 | 51 25 |
| Making a manuscript copy of the record, when required by the rules, for each one hundred words (but nothing in addition for supervising the printing) | 20 | |
| Issuing a writ of error and accompanying papers, or a mandate or other process | 5 00 | 5 00 |
| Filing briefs for each party appearing | 5 00 | 20 00 |
| Attorney's docket fee | 20 00 | 20 00 |
| Cost of printing record | | 185 50 |
| Cost of patent sheets for record | | |
| | | $294 05 |
| Paid | | $150 25 |
| Balance due | | $143 80 |

Received payment ....., 192

*Clerk, United States Circuit Court of Appeals for the Seventh Circuit.*

Filed Sept. 30, 1918.

204 And on to wit: the 30th day of September, A. D. 1918 there was filed in the Clerk's office of said court a certain Mandate, in words and figures following to wit:

205 United States of America } ss.

(Seal)

The President of the United States of America, To the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division; Greeting:

Whereas, lately in the District Court of the United States for the Northern District of Illinois, before you, or some of you, in a cause between Wm. Wrigley Jr. Company and L. P. Larson Jr. Company and L. P. Larson Jr., the Decree entered on the fourteenth day of March, 1917, is in words and figures following, to wit:

Now come the parties by their respective solicitors, and the trial of this cause is resumed, evidence on behalf of the respective parties is heard and concluded and arguments of counsel, and the Court being now fully advised in the premises;

It Is Ordered, Adjudged and Decreed, That the bill of complaint be and the same is hereby dismissed for want of equity and that the said defendant have and recover of the plaintiff its costs herein to be taxed, and that execution issue therefor, as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Seventh Circuit by virtue of an appeal agreeably to the act of Congress, in such case made and provided, fully and at large appears.

206 And Whereas, in the term of October, in the year of our Lord one thousand nine hundred and seventeen, the said cause came on to be heard before the said United States Circuit Court of Appeals for the Seventh Circuit, on the said transcript of record, and was argued by counsel:

On Consideration Whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said

District Court in this cause be, and the same is hereby affirmed with costs.

Tuesday, July 30, 1918.

You, therefore, are hereby commanded that such further proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Edward D. White, Chief Justice of the United States, the fourth day of September in the year of our Lord one thousand nine hundred and eighteen.

EDWARD M. HOLLOWAY,
*Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

* * * No. 30,563 * * *

Mandate Filed Sep. 30, 1918 at o'clock M. T. C. MacMillan, Clerk.

207 And afterwards on, to wit, the 14th day of October, 1918, this matter coming on to be heard, the following Decree was entered by the Court: Entered Oct. 14, 1918.

208 * * * No. 488 * * *

October 14, 1918.

Present: Honorable George A. Carpenter, District Judge.

DECREE.

The defendant and counterclaimant heretofore having appealed to the United States Circuit Court of Appeals for the Seventh Circuit from the decree made by this court in this cause on the fourteenth day of March, 1917, dismissing the said counterclaim of the defendant for want of equity, and the original plaintiff Wm. Wrigley Jr. Company having likewise appealed from the decree of this court of the same date dismissing the bill of the said complainant for want of equity, and the said United States Circuit Court of Appeals, having at the October Term, 1917, duly heard the said appeals upon the transcript of the record and arguments of counsel, and having thereupon ordered, adjudged and decreed that

said decree dismissing the bill of the Wm. Wrigley Jr. Company was right and just, but that the decree dismissing the said counterclaim was erroneous and should be reversed and annulled, and that the counterclaimant L. P. Larson Jr. Company was and is entitled to an injunction and accounting against the Wm. Wrigley Jr. Company on account of the Doublemint package manufactured and sold by the said Wm.
Wrigley Jr. Company; and the said United States Cir-
209 cuit Court of Appeals having remanded said cause to this
court with instructions to enter an injunction and order an accounting, and to take such proceedings in said cause as, according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding, which said decree, order and instructions appear to this Court by the mandate of the said United States Circuit Court of Appeals duly by leave of this court filed herein on September 30th, 1918.

Now, Therefore, in conformity with the said mandate, it is ordered and decreed that Wm. Wrigley Jr. Company, complainant and defendant to said counterclaim, its officers, attorneys, servants and agents be and they are each hereby perpetually enjoined and restrained from putting up, or selling, advertising or offering for sale or giving away, or employing or continuing to employ in advertisements, any gum of said Wm. Wrigley Jr. Company in dress, wrappers or labels identical with or in combination substantially like the dress, wrappers or labels heretofore and now used on the brand of gum of complainant known as "Doublemint," as shown by Exhibit No. 3 to the said bill of complaint, a specimen of which is hereto annexed and marked "Specimen Complainant's Exhibit No. 3" and made a part hereof, and from using or employing in the manufacture, sale, advertisement or distribution of gum made or distributed by said Wm. Wrigley Jr. Company a dress, wrappers, or labels identical with or in combination substantially like the dress, wrappers or labels used and employed by L. P. Larson Jr. Company upon and in connection with its "Wintermint" gum as shown by Exhibit No. 4 to the bill of complaint and Exhibit No. 2 to the counterclaim of said L. P. Larson Jr. Company, a specimen of which said package is hereto attached and marked "Specimen Defendant's and Counterclaimant's Exhibit No. 2 and Complainant's Exhibit No. 4", and from using or employing upon or in connection with the manufacture, putting

up, advertisement or sale of the gum of said Wm. Wrig-
210 ley Jr. Company any dress, wrappers or labels calculated to induce the purchase of the gum of the Wm. Wrigley Jr. Company as and for the gum of the L. P. Larson Jr. Company; provided, however, that said Wm. Wrigley Jr. Company may have a period of ninety days from the entry of this decree to comply with the terms and conditions of said injunction, injunction writ not to issue before ninety days from date hereof; subject, however, in sales during that period to the accounting hereinafter ordered. This injunction in nowise relates to or affects the Spearmint packages, wrappers or labels shown by Complainant's Exhibit No. 2 attached to the Bill of Complaint, or the rights of either party therein or thereto. A specimen of said Spearmint package is marked Ex. 2, and made a part hereof.

And this court doth further order and decree that the cause be referred to Charles B. Morrison, one of the Masters of this court, with all the usual powers of a master in such accountings, to take an account of all the gains and profits of Wm. Wrigley Jr. Company to it accruing or arising from the manufacture and sale of its Doublemint gum in the dress herein before enjoined from its first sale on July 28, 1914, to the date of the entry of this decree and such further time, not exceeding ninety days, as may be necessary to comply with this decree, and until compliance therewith.

The said Master shall have power to employ chartered accountants to examine the books of Wm. Wrigley Jr. Company for the period covered by the decree; if he decides so to do, he shall select persons who have no interest in the questions in controversy between the parties herein, to whom he shall administer an oath to impartially and faithfully examine all books, orders, shipments, reports, letters and files of said Wm. Wrigley Jr. Company, to ascertain the profits, if any, accruing to said company from the sale of Doublemint as contradistinguished from the other brands of gum made by said company during the period, making proportionate deductions for overhead, advertising and other proper expenses,
and report the facts for each year embraced in the terms
211 of the decree, provided that, if said Wm. Wrigley Jr. Company, or its officers, do not allow such accountants full, free and complete access to said books, papers and documents on and for said accounting aforesaid, then on not less than three days' notice, said Wm. Wrigley Jr. Company and

its officers are ordered and directed to produce before said Master all its books, papers and documents, at the time and place requested, proper and pertinent to the accounting ordered; with leave to the parties to adduce evidence as they may be advised, to support or assail such report of the accountants, and to have before the Master all books, papers and documents of the Wm. Wrigley Jr. Company necessary for that purpose, and to the Master to adopt, modify or reject the report of such accountants as he may be advised; the said Master returning the report of the accounts with the evidence and his conclusions of fact and law to this court.

The parties may apply to the court from time to time for further directions as they may be advised.

Enter

(Signed) CARPENTER,
*Judge.*

14 Oct. 1918.

(Here follows page 518a.)

Entered Oct. 16, 1918.

212 And afterwards on, to wit, the 16th day of October, 1918 this matter coming on to be heard, the following order was entered by the Court:

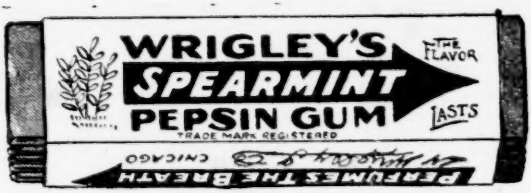
213 * * * No. 488 * * *

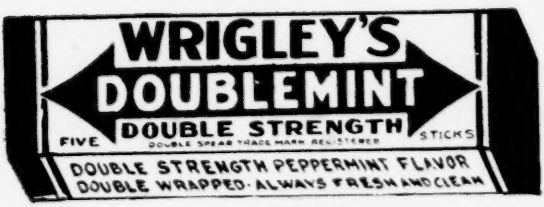
Wednesday, October 16, 1918.

Present: Hon. George A. Carpenter, Judge of said court.

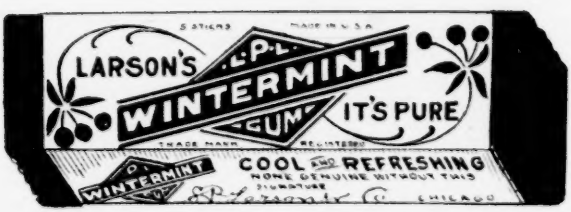
Now come the parties by their respective solicitors and now comes on to be heard the motion of complainant for stay of proceedings before Charles B. Morrison, Master in Chancery of this court, pending application to the United States Supreme Court for Writ of Certiorari. After hearing arguments of counsel, it is ordered that said motion be and the same is hereby denied.

1957 And on to wit: the 1st day of September, A. D. 1925, there was filed in the Clerk's office of said Court a certain Evidence, Volumes I, II, III, and IV, in words and figures following to wit:




Specimen Complainant's Exhibit No. 3.




Specimen Defendant's and Counter Claimant's Exhibit No. 2 and Complainant's Exhibit No. 4.